Public Utilities

FORTNIGHTLY

February 1, 1940

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

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These new wide neck model Silex Glass Coffee Makers stimulate new interest — make extra sales. And every sale of a Saratoga Model pictured (which lists at $6.45 in the ivory trim without tray) adds an average of 97 KWH to your connected load.

Other model Silex Glass Coffee Makers, either narrow or wide neck, retail at from $2.9 models have Pyrex brand glass, and ha patented Silex spring tension filter which only method of securing clear, clean free from sediment and drugs.

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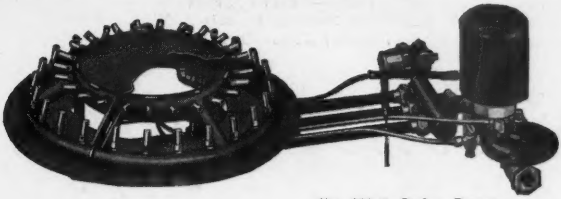
Genuine SILEX GLASS COFFEE MAKER

TRADE MARK REGISTERED U.S. PAT. OFF.



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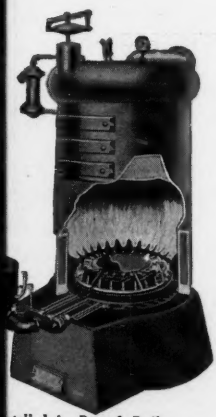
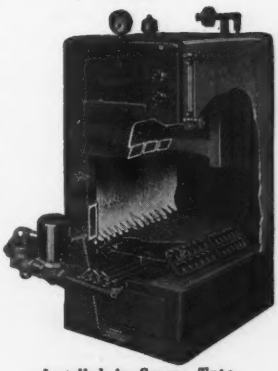
Adaptable to Any Shape Furnace or Boiler

★ *Better Combustion*—because *only* patented Barber Jets give correctly balanced air-and-gas pre-mixture for complete combustion, and 1900° flame temperature on atmospheric pressure. ★ *Higher Efficiency*—because all Barber Units, for either round or oblong grates, are properly adjustable to fit the job, and to lay a perfectly controlled barrage of "scrubbing" flame action *directly* on walls of fire box.



stalled in Round Boiler

★ Experience has convinced thousands of heating dealers and gas companies that Barber Burners mean *easier* sales and more *lasting* satisfaction. Listed in A.G.A. Directory of Approved Appliances. Write for Catalog 38A on Conversion Burners, Appliance Burners, and Regulators.



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Editor—HENRY C. SPURR
Associate Editors—ELLSWORTH NICHOLS, FRANCIS X. WELCH, NEIL H. DUFFY
Financial Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XXV *February 1, 1940* NUMBER 3

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

WE have heard of a great many ways of measuring the build-up and downfall and other variations in the fortunes of industrial enterprise, from the scientific Dow-Jones formula to the telephone installation index. But we were intrigued by the forthright method recently suggested by the impish *New Yorker* for gauging what is happening to the railroads.

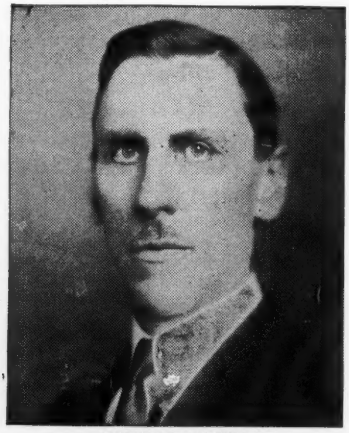
THE editors of that publication merely took a copy of the "Official Guide to the Railways and Steam Navigation Lines of the United States" (which prints the time tables, freight and passenger, of all the railroads and steam boats on the North American continent) and put it on the scales. The current issue weighs three pounds and two ounces, whereas ten years ago the Guide weighed four pounds.

WE have some doubt whether this simple method could be used to estimate anything very significant about other forms of utility businesses. We looked over a number of standard directories for the electric and transit companies (McGraw-Hill), gas companies (Brown's), and telephone companies (Telephony); and year in, year out, during the last decade they seemed to weigh just about the same. This would seem to give a superficial impression of a static condition which has no foundation in fact. All this proves very little except, perhaps, that changes in utility net revenues do not necessarily denote changes in nor amplification of rate schedules, and vice versa.

HAROLD DINGMAN

Ottawa is flashing the green light for the St. Lawrence project.

(SEE PAGE 131)



GEORGE E. DOYING

The St. Lawrence proposal still faces a red light in Washington.

(SEE PAGE 135)

INDEED, if the proponents of simplified uniform rate schedules for gas and electric utilities are right in their contention that their program would bring in new business, we might witness the paradox of such utility industrial directories growing somewhat smaller in proportion to increasing activity of the general enterprise.

YET, we know from experience that the useful information compiled in such publications very often results in unexpected advantages. For example, it was an editor of the Official Guide, etc., the late William F. Allen, who in 1883 advanced the happy and sweeping notion of dividing the country into four time zones which simplified the life of a nation. If it had not been for that, the nation would most likely

have gone crazy trying to figure out time schedules, in view of the fact that about 50 railroads were using their own special time when the time zones were adopted. Likewise, it was the very compilation of the 57 and more varieties of rate schedules in utility directories of a decade ago that brought attention to the need for more simplified and uniform rate practice.

SINCE then, of course, the ICC has taken over control of the clock by which our trains arrive and depart. And the FPC has assumed the laboring oar in bringing the other utility rate schedules more and more into line with each other. But we should not forget the ground-breaking work of the industrial directories in these important steps toward a more orderly development of our public service.

WE pass this idea along for what it is worth to the able junior Senator from Virginia, Harry Flood Byrd, who, we understand, is interested in bringing some order out of the quasi chaos which now exists among a number of overlapping, duplicating, and sometimes pretty near fist-fighting administrative tribunals of the Federal government. A casual inspection of the "United States Government Manual" is almost unnerving in its implications along this line.

*

AT this writing the St. Lawrence seaway-power project has reared its controversial head once more on at least three horizons: Ottawa, Washington, and Albany. We note with some uncertainty the latest variety of arguments being advanced at all three points for the adoption of this ambitious program to make the Great Lakes an inland sea and turn the International Rapids into an international power house. In Canada the St. Lawrence project is being sold under a label that it is designed to aid the British Empire in its war on Germany. In Washington we have heard the suggestion that the St. Lawrence project will buttress our national defense and by implication enable us to keep out of war with Germany or anybody else. In New York Governor Lehman, in his recent message to the state legislature, implied that a reversion to Al Smith's almost forgotten formula of public power production, plus private power distribution, might mean mutual advantages for both the utilities and their consumers. Therefore, we have been assembling a St. Lawrence series.

M. R. KYNASTON

Inspection of domestic wiring may show how rate reductions can begin at home.

(SEE PAGE 142)

CHESTER MERRILL WITHINGTON

The electric business is among the foremost purveyors of the more abundant life in the United States.

(SEE PAGE 149)

IN this issue of the FORTNIGHTLY we present twin articles dealing with the Ottawa and Washington viewpoint, respectively. The former was written by HAROLD DINGMAN, parliamentary correspondent for the Toronto *Globe and Mail* in the press gallery of the House of Commons at Ottawa. The Washington angle is handled by GEORGE E. DOYING, editor of *PUR Executive Information Service*. M. R. KYNASTON, of Washington, D. C., and CHESTER MERRILL WITHINGTON, of New York city, whose articles dealing with the electric power industry appear on pages 142 and 149, respectively, are both investment specialists of considerable experience.

THE next number of this magazine will be out February 15th.

The Editors

In This Issue

In Feature Articles

In Financial News

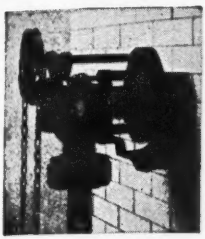
In What Others Think

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 129–192, from 31 PUR(NS)



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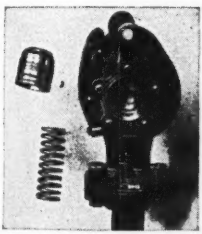
The Vulcan Automatic Valve Operating Head is an advanced development for the high and ever increasing higher pressure and temperature conditions encountered in modern steam plants. Simplicity is the keynote in design and construction. A piston valve steam actuated thru a pilot valve provides positive operation—makes Vulcan Automatic Heads the greatest step ahead in Soot Blower Design in the past 15 years.



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emphatically YES!

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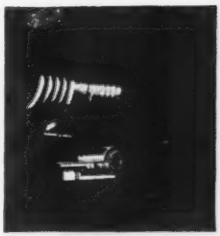
—are built with but one object—to provide industry with the highest quality equipment of this type it is possible to build. Every steam plant offers new problems in soot removal—Vulcan Engineers have successfully solved thousands of such problems. Vulcan installations are soundly designed, individually designed to do their work efficiently and economically—***to cut fuel costs and provide real savings in steam production.***

From the desks of design and layout engineers to drafting room to factory craftsmen and to field service, Vulcan personnel takes pride in providing a personalized installation, built to exacting standards for long service and economical operation—backed by a record of lowest maintenance. *Ask the Vulcan Engineer representative why Vulcan must build to highest standards only.*



VULCAN VALVE DETAIL

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Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

EDITORIAL STATEMENT
Forbes.

"TNEC: Try Not Endanger Confidence."

FLOYD W. PARSONS
Editorial director, Gas Age.

". . . in the gas industry there appears to be a minimum of stupidity and fear."

CONRAD N. LAUER
President, The Philadelphia Gas Works Company.

"It is my firm belief that the securities of the gas industry are growing in favor."

EDITORIAL STATEMENT
Railway Age.

". . . our railways approached the 1914-1918 war crisis in far better shape than they are in today."

HAROLD L. ICKES
U. S. Secretary of the Interior.

"Whether we like to admit it or not, we—the nation as a whole—cannot afford to let any major industry, no matter how much it wants to do so, bankrupt itself."

EDITORIAL STATEMENT
Gas.

". . . in 1938—in the face of Washington's rural electrification program—the bottled gas industry had almost half as many installations as the electric industry!"

PAUL G. HOFFMAN
President, Studebaker Corporation.

"There is no prospect of a blackout of freedom in America, but there is, however, danger of a fadeout as a result of certain pressures which threaten free enterprise."

JEROME N. FRANK
Chairman, Securities and Exchange Commission.

"Our aim is and must be this: A secure profit system under a secure democracy. And coöperation between government and business can achieve—and is achieving—that result . . . "

JOHN M. CARMODY
Administrator, Federal Works Agency.

" . . . there are few of your [Nebraska's] citizens who have not been convinced, either by Senator Norris or by nature, of the necessity for the proper conservation and use of your waters."

JOSEPH B. EASTMAN
Chairman, Interstate Commerce Commission.

"It would be more economical for the government not to construct and maintain the waterways, but instead to use an equivalent amount of money as a subsidy to the railroads in exchange for lower rates."

THOMAS GIRDLER
Chairman, Republic Steel Corporation.

"Upon business men falls the obligation to defend free enterprise from further crippling restrictions."

HARRY L. HOPKINS
U. S. Secretary of Commerce.

"There has been no indication that government wishes to own and operate all the utilities of this country."

BURT J. THOMPSON
Chairman, American Bar Association Committee to Develop Legal Institutes.

"The lawyer population of the United States is increasing nearly twice as fast as the rest of our population."

HARRY FLOOD BYRD
U. S. Senator from Virginia.

"Elimination of unnecessary relief costs is vital to the preservation of the character of the American people."

LEONARD P. AYRES
Vice president, Cleveland Trust Company.

"In 1940 we shall make rapid progress in our economic education. We shall choose a President not only over our politics, but also over our economics."

JOHN A. RIGGINS
President, New Jersey Utilities Association.

"The public cannot be blamed for accepting something for nothing as was the case with the TVA . . . But the public in the nation, I believe, will refuse to subsidize losing Federal projects in any favored section."

PAUL V. MCNUTT
Federal Securities Administrator.

"I believe the capitalistic order can work under democracy. Government and private enterprise must work in harmony. Men need not surrender their birthright for a mess of Communistic or Fascist pottage."

ELMER A. SMITH
General Attorney, Illinois Central System.

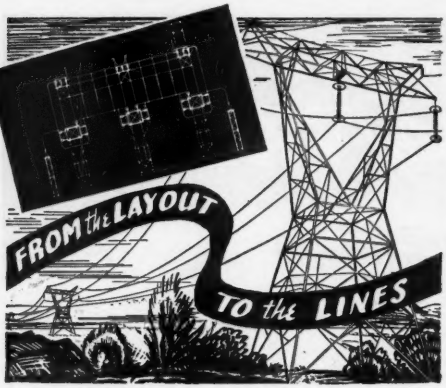
"Those who use the inland waterways and the highways for the transportation of their freight are in the last analysis imposing upon the taxpayers a part of the cost of transportation service for their own individual benefit."

GEORGE D. AIKEN
Governor of Vermont.

"Democracy is waging a battle within itself against the forces of centralization which, in the name of efficiency or benevolence, are cutting the ground of government from under the citizens and placing it in the national capitol."

LISTER HILL
U. S. Senator from Alabama.

"If the power developed, as proposed by the Tennessee Valley Authority in its unified system, is sold to cities situated like Cincinnati, Louisville, and Atlanta, and if it should prove that this power is needed in time of war, when mass power is absolutely necessary for mass production, we will find ourselves building steam plants because the power on the Tennessee river will not be available."



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ARIDIFIERS are easy to install, operate at no back pressure, have no rapidly wearing parts, need no maintenance and return their cost in a few months time. Ruggedly built in sizes from 3/8" to 10" for years of service.

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We will gladly send you an ARIDIFIER for thirty days free trial so that you can see for yourself how quickly and completely it will cut your air tool maintenance cost. Write for details.

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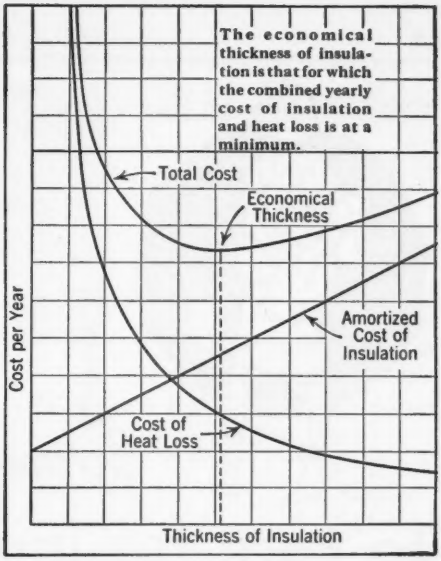
Write for our illustrated booklet:
"LINE CLEARING"

How to SAVE THE MOST MONEY with INSULATION



Make sure all your equipment is insulated with the *correct materials* in the *one correct thickness* that combines maximum operating efficiency with minimum heat waste

WHETHER OR NOT your insulation is a paying investment depends entirely on the materials used and the amount applied. *Too much* insulation will never pay an adequate return . . . *too little* results in heat losses that build up excessive fuel bills. Proper insulation, properly applied, will avoid both these costly mistakes. And that's where the J-M Insulation-Engineering Service can help you.

Let a J-M Engineer go through your plant and make a thorough study of your requirements. He'll give you the benefits of Johns-Manville's 81 years' research and practical experience with insulation problems. He can tell you exactly how much insulation you can profitably use . . . and his recommendations will point the way to worthwhile reductions in your fuel costs.

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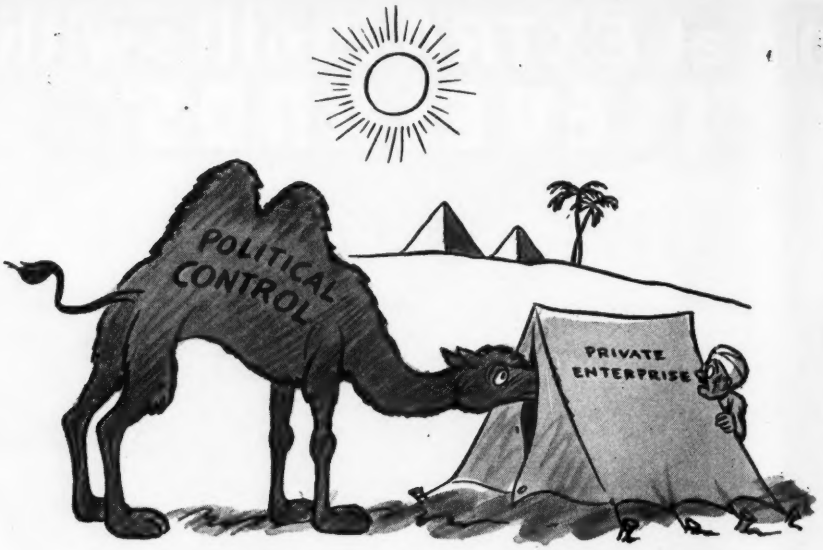


Now, IT'S INSURANCE!

TWO MIGHTY FORCES, representing two conflicting theories of human relations, are at grips today.

One group fights for the traditional American way of free enterprise—with its balance sheet of trial and error, mistakes offset by brilliant contributions to progress. The other fights for the belief that the energies of the individual can best be controlled by political agencies, for the greatest good of the greatest number.

Both are sincere. But the case for political control makes us the victims of a popular delusion. As a noted sociologist expressed it: "The greatest fallacy in human logic is to attribute to present social or economic systems those problems which arise from the nature of man himself."

In their eagerness to promote the cause of national planning, its proponents through investigations discover and emphasize "those problems which arise from the nature of man himself." Thus unusual episodes appear as major defects seeming to condemn the free enterprise system. Control by Federal bureaus is then proposed in the name of reform.

This has been the course in relation to banking, power and light, manufacturing, labor relations, oil, coal, communications.

Today another Federal investigation is publicizing the problems of insurance "which arise from the nature of man himself," insignificant though they are compared to the amazing contribution of insurance to human welfare.

If the people accept the fallacy that there is cause for condemning the institution of insurance, the camel's nose will slip under the tent.

The nose will represent a little competition—compulsory burial insurance and Federal Annuities; a degree of Federal control; a small part in the determination of how insurance investments shall be made; a hand in the administration of the business operation. But the first steps along this road, as history and recent events make clear, are never retraced, but call for further steps.

This message is published by

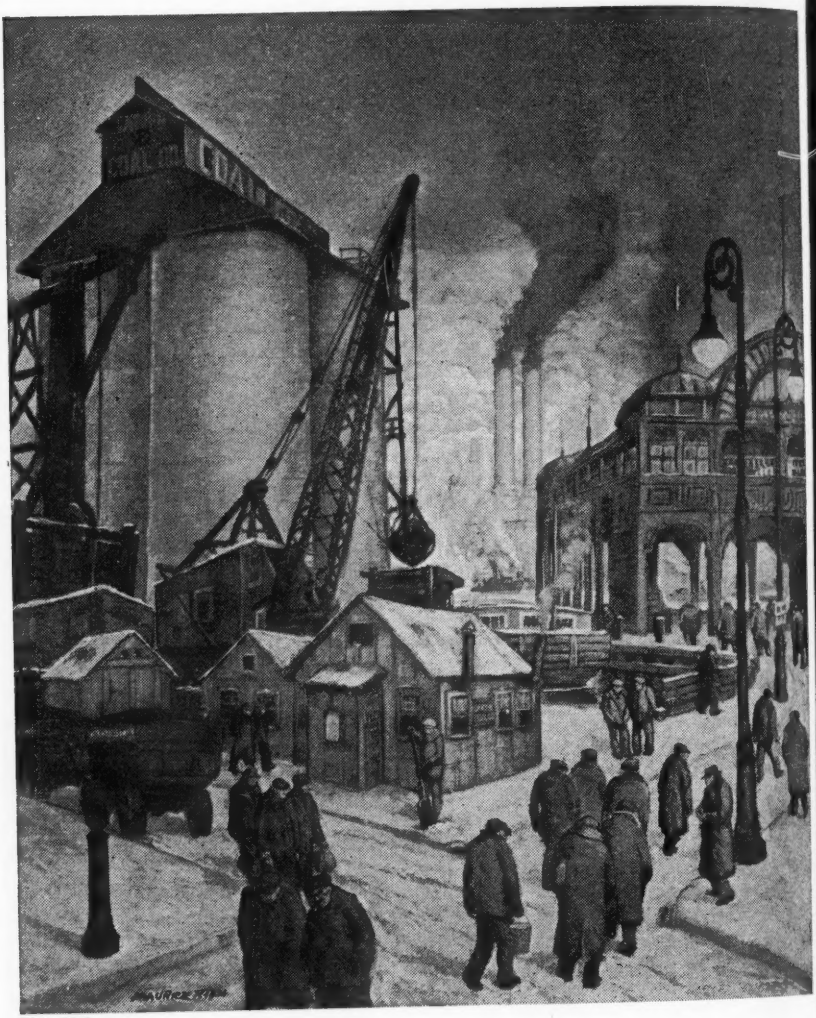
NATION'S BUSINESS

It is the 38th of a series contributed toward a better understanding of the American system of free business enterprise. Regardless of your political affiliations, if you have a point of view you would like to express on developments now shaping in the field of public policy relative to insurance, why not write to your Congressman or Senator?

Utilities Almanack

FEBRUARY

1	T^h	¶ *Mid-West Regional Gas Sales Conference will be held, Chicago, Ill., Feb. 15–17, 1940.*
2	F	¶ *Wyoming Engineering Society convenes for session, Laramie, Wyo., 1940.*
3	S^a	¶ *Eastern Natural Gas Regional Sales Conference will be held, Pittsburgh, Pa., Feb. 29, Mar. 1, 1940.*
4	S	¶ *New England Gas Association will hold meeting, Boston, Mass., Mar. 14, 15, 1940.*
5	M	¶ *EEI Prime Movers Committee opens meeting Detroit, Mich., 1940.* ¶ *National Electrical Manufacturers Association convenes, New York, N. Y., 1940.*
6	T^u	¶ *American Water Works Association, Southeastern Section, will hold convention, Birmingham, Ala., Mar. 18–20, 1940.*
7	W	¶ *Oklahoma Telephone Association will convene for session, Tulsa, Okla., Mar. 27, 28, 1940.*
8	T^h	¶ *EEI Accident Prevention Committee opens meeting, St. Louis, Mo., 1940.*
9	F	¶ *Kansas Telephone Association will hold convention, Topeka, Kan., Apr. 3, 4, 1940.*
10	S^a	¶ *American Water Works Association, Indiana Section, will hold meeting, West Lafayette, Ind., Apr. 4, 5, 1940.*
11	S	¶ *Mid-West Gas Association will convene for annual meeting, Lincoln, Neb., Apr. 15–17, 1940.*
12	M	¶ *Southern Gas Association starts convention, Hot Springs, Ark., 1940.* ¶ *EEI Electrical Equipment Committee opens meeting, Cincinnati, Ohio, 1940.*
13	T^u	¶ *Texas Telephone Association will hold annual convention, San Antonio, Tex., Mar. 19–21, 1940.*
14	W	¶ *Conference on Highway Engineering opens, Ann Arbor, Mich., 1940.* ¶ *EEI Meters and Service Committee convenes, Richmond, Va., 1940.*



Elsie Hafner

"Job Hunters"

From a painting by Maurice Kish

Public Utilities
FORTNIGHTLY

VOL. XXV; NO. 3 FEBRUARY 1, 1940

The Ottawa Viewpoint of the St. Lawrence Proposal

The author declares that Canadian opposition to the ship waterway has been removed by the war and that the 20-year dream of the seaway is nearing fruition.

BY HAROLD DINGMAN

CANADA'S participation in the war has caused a major upheaval in Canadian politics, has spurred industry to vast projects of expansion, and has cleared the way for the development of the St. Lawrence.

The war has brought a united Canada. Discordant notes between governments were hushed. One arch-foe of the St. Lawrence project was swept from office on a war issue vote, and the other made a complete about-face and pledged his coöperation on the seaway scheme.

Behind these political scenes was a rapidly changing industrial situation. Both the British and the Canadian governments started placing heavy war orders and industry was forced to expand almost overnight. Looking ahead, industry is to need new power.

CANADA'S Prime Minister, William Lyon Mackenzie King, has always been a friend of the St. Lawrence scheme, but opposing him were the Premiers of the two provinces most concerned, Mitchell F. Hepburn of

Ontario and Maurice Duplessis of Quebec. Hepburn has now capitulated. Duplessis is gone from office.

Before the war, Hepburn was conducting a bitter feud against Mackenzie King on many issues. Chief among them were the Prime Minister's insistent efforts to get the seaway scheme under way. Hepburn argued that Ontario did not need the additional power and that the province had a surplus for export to the United States. He balked at the price (about $100,000,000) Ontario would have to pay and he predicted the deep sea scheme would ruin the railways and freight companies.

Mackenzie King, bland, persuasive, shrewd, argued the case for the St. Lawrence but, finding Hepburn adamant, he let the matter drop.

That was a year ago and up until the outbreak of the war the Ontario Premier had not altered his stand. But within a month he swung completely about. Together with Dr. T. H. Hogg, chairman of the Hydro-Electric Power Commission of Ontario, he visited Ottawa and promised his aid to help the Dominion in any way possible regarding the war.

THERE were two reasons which motivated Hepburn's about-face. The first was that he is intensely patriotic and when war was declared he quickly offered a hand of friendship to his old enemy, Prime Minister Mackenzie King. Hepburn believed that in this crisis all governments should work together and it didn't matter to him that it was Mackenzie King who was Canada's war-time Prime Minister.

His second reason was that Ontario industry was starting to boom with the stimulus of war orders from both the British and Canadian governments. While the province has, at the moment, a fairly safe margin of power, the long-term outlook is not good. Ontario's industry will need additional power for years to come and the only source of that power is the St. Lawrence.

He made two qualifications in his offer. The first was that he should be permitted to divert the waters of the Ogoki river into the Great Lakes system, and the second was that he should be permitted to export a small amount of power at Cornwall, Ontario. These qualifications are minor and it is expected they will be granted by the United States. Cordell Hull, in his draft treaty to Mackenzie King in May, 1938, made provision for both.

Within a few days after his first conference with Mackenzie King, the Dominion and Ontario governments placed formal negotiations in the hands of Hydro experts and the Dominion started informal conversations with Washington.

THE peak load on the Ontario Hydro system comes in November and December, but even as early as September primary power loads were rising as much as 10 per cent and this was without the impetus of war business. The Hydro reserves are still safe, but if power demands keep rising —and they are bound to rise sharply— then it is quite probable that by 1941 Ontario will be absorbing all of the present available sources.

With Britain and the Dominion placing heavy munitions orders in Ontario, it is obvious that the province must look about immediately for new power. Ontario is Canada's major in-

THE OTTAWA VIEWPOINT OF THE ST. LAWRENCE PROPOSAL

The Financial Post—Toronto —*Cartoon by Grassick*

"HEIGH-HO THE SEAWAY-O . . ."

dustrial province and most of the war business will go to Ontario's factories. Should Ontario fail to take care of the orders — and thus endanger Canada's war effort—because of a power shortage, the outcry against Hepburn would be sufficient to drive him forever from public life.

Hepburn, knowing the demand for power which is coming, has already ordered delivery of an additional 60,000 horsepower from the Gatineau Power Company of Quebec. This is the last instalment on a contract calling for 260,000 horsepower.

BUT the reason for his determination to push the St. Lawrence as quickly as possible rests not alone with the immediate war issue. It does not necessarily follow that when the war is done Ontario's industry is going to shrink to its previous capacity and output. Quite the contrary. Take, for a single instance, the airplane industry. Canada is to become the chief center of the Empire for the training of 25,000 airmen per year. For the duration of hostilities military planes will be manufactured, but when the war is over Canada will convert this industry from a military basis to a civil basis and will produce planes, not only for domestic use, but for export. Already this Dominion carries more freight by air than any other country,

chiefly because of her mining areas lying in remote, distant areas unreachable by any other means of transportation.

The friendship and coöperation which now exist between the governments of Canada and Ontario have finally extended to all of the other eight provinces of the Dominion. One by one they have answered the roll call to make a national war effort on the side of Britain. And almost all of them will receive some benefit from war orders—the industrial areas because of munitions business and the agricultural areas because they will sell large quantities of foodstuffs to the allied armies.

IN the province of Quebec the outlook was far different at the outbreak of the war. Premier Duplessis, one-time friend of Premier Hepburn, opposed Canada's participation and called an election on the issue. He immediately lost Hepburn's friendship, and the old Quebec-Ontario axis which wielded a powerful club against the Dominion government for three years collapsed. The Ontario Premier angrily denounced Duplessis as unpatriotic.

The Dominion government was frankly fearful of the outcome of the election, for the French-Canadian is by instinct a nationalist and a North American. Few of them want any part in an overseas war.

Quebec industry, according to the Dominion administration, was already losing business because Great Britain declined to place munitions orders in that province. It was claimed that whereas Ontario industry was booming and jobless men returning to work, Quebec's factories were lagging behind.

Before the war, Duplessis also had been an enemy of St. Lawrence, siding with his friend Hepburn. His argument was that the St. Lawrence would injure Quebec's vast power resources and also would affect the port of Montreal by permitting ocean-going steamships to go into the Great Lakes to unload.

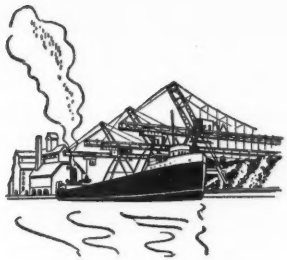
But Duplessis counted too much on the nationalist instincts of the French-Canadians and they swept him out of office and elected the Liberal party, led by Adelard Godbout, a scientific farmer and good friend of the Dominion government.

Thus the 20-year-old dream of a St. Lawrence seaway to the Great Lakes is nearing fruition. The two major political obstacles in Canada have been removed.

The Price of the American Way

"THE American Constitution has survived depressions, panics, political follies, wars at home and abroad. It can continue to survive them all. It can continue to survive every adversity of life, save the moral and political degeneracy of its own people. Strict fidelity to the American way of life; eternal vigilance against the insidious forces which seek to break it down—this is the price, and the only price, which must be paid by those to whom the blessings of freedom have been secured."

—DALE MILLER,
Associate editor, The Texas Weekly.



The Washington Viewpoint of The St. Lawrence Proposal

The author questions the value of the development as a war measure and believes that the Senate will oppose treaty ratification in 1940.

By GEORGE E. DOYING

In determining the prospect for approval at Washington of any new form of St. Lawrence seaway-power treaty in 1940, a good starting point is to consider the underlying basis for the reported sudden change of policy in Canada. The ostensible reason is the outbreak of war in Europe and the loyalty of the Dominion of Canada to the British Empire.

But, assuming that the general war situation is the main explanation for the about-face maneuver at Ottawa (or, perhaps more correctly, at Toronto), does it necessarily follow that additional electric power supply in itself is the immediate objective, on the basis of military expediency? Is this what the Dominion of Canada has in view in suddenly warming up to a St. Lawrence seaway pact to which it has turned a cold shoulder during recent years, notwithstanding enticing overtures from the White House?

In passing, it might be noted that the seaway feature of the proposal (as distinguished from the hydroelectric feature) would hardly cut an important figure from the standpoint of Canada's organization of military and economic assistance to the mother country. There would unquestionably be certain convenience and economy in having ocean-going vessels proceed directly into the Great Lakes, rather than having the double handling of railroad hauling of commodities to the port of Montreal, even though the change of method might injure business of Canadian as well as American railroads. But this difference alone could hardly be of sufficient importance to explain the latest Canadian shift. The accent placed on power seems much more plausible.

However, whether the Canadian accent is upon power or upon transportation, the argument that Canada wants the St. Lawrence development as part

of her war effort is clouded by the time element. Here is a quotation from a report of the St. Lawrence Power Development Commission, submitted to Governor Roosevelt and the legislature of the state of New York on January 15, 1931. (It was this report which recommended the establishment of the New York State Power Authority.) Speaking of the time element, the report stated:

> A careful construction program has been worked out by our engineers. On the basis of this they have estimated that the time required for the completion of the initial project for 600,000 firm horsepower would be between four and six years. If the project should be constructed only to the initial height, it might require from two to three additional years to complete the ultimate development. If, however, the entire project should be started with a view to developing the full head and the ultimate capacity of 2,200,000 horsepower, they believe that it could be completed in from six to seven years after the work is started.

CONCEDING, for purposes of discussion, that the St. Lawrence treaty might be approved by the U. S. Senate in the spring of 1940, the necessary organization of personnel, drafting of plans, letting of bids, and so forth, would take up most of the balance of that year. This would mean, on the basis of the New York state report, a minimum of five years from the end of the year 1939 before the St. Lawrence project could begin to produce at all. And this, according to the impression given by the more zealous exponents of this program, is the electric power needed for the "war-time emergency"! Meantime, Canadian resources would actually be diverted, for construction purposes on this project, from more pressing military enterprise.

Now, as a practical matter, few realistic observers expect the present European war to go on for more than five years. True, government leaders of the belligerent powers have talked vaguely about being prepared for a conflict lasting for even a decade. But that is propaganda. The consensus of impartial opinion seems to be that neither side in the present European war could last for more than five years.

Again, American construction methods on this type of work have probably improved since 1931 and the time limit predicted by the New York state report might be curtailed to some extent if concentrated government effort were focussed on racing the project to completion.

HOWEVER, there is no comparable recent American government experience along this line to justify too much optimism. Even the TVA, which has accomplished a remarkable record for completing its hydro units ahead of schedule, took more than three years (September, 1933, to October, 1936) to complete Norris dam on the Clinch river, and three and one-half years to build Wheeler dam (with units Nos. 1 and 2). Neither of these projects involved any more stubborn construction difficulties than the St. Lawrence proposal and in some respects (such as weather conditions) construction circumstances are probably even more favorable for the Tennessee valley projects.

As a matter of fact, if Canada were in a hurry for more electric power reserves, she could probably obtain them within her own borders quicker than through the St. Lawrence international development. The Beauharnois Power Corporation already has applied for approval of the Dominion govern-

ment under the Navigable Waters Protection Act for the use of 30,000 c.f.s., and there is said to be an additional 250,000 horsepower capable of conversion at the Beauharnois site. There is also power from the Ottawa river, notably the power site at Carillon, where 450,000 horsepower at 70 per cent load factor can be made available at about $90 per horsepower, including provision for navigation facilities.

THE question therefore arises whether Canada does not have some longer-range program in view with respect to the St. Lawrence development than meeting the existing war emergency. It has already been noted that plans are afoot to make the northern Dominion a center for airplane construction and that when the war is over Canada hopes to convert this industry from a military basis to a peace-time basis. It may be that this is just one phase of a general long-range program to convert the Dominion of Canada from an economy based on agriculture and exploitation of natural resources to an industrialized economy that would elevate the Dominion to a more important place in the British Empire. If such a general program is in prospect, it is easy to see how both the additional power reserves and the additional transportation facilities afforded by the St. Lawrence seaway would fit into it.

But by the same token, an industrialized Canada (after the present war is over) would necessarily mean cutting into a profitable market for American manufactured products. And this brings us at last to the Washington angle on the latest proposal to develop the St. Lawrence.

THE vote taken by the United States Senate in 1934, by which the original Bennett-Stimson treaty fell far short of the necessary two-thirds approval, shows clearly that the issue cut across party lines. The division was obviously more geographical than political. Most of the Senators who voted in favor of the treaty were representatives of agricultural states, particularly the grain belt. They were anxious to secure cheap transportation for farm products. The bulk of the opposition was composed of easterners and southerners who feared competition for such port cities as Boston, New York, Baltimore, Savannah, and New Orleans, and certain inland water transportation.

In addition to this difference, based chiefly on transportation economy, undoubtedly some Democratic Senators voted out of party loyalty and fewer Republicans voted against the administration on general principles. The

¶ "CONCEDING . . . *that the St. Lawrence treaty might be approved by the U. S. Senate in the spring of 1940, the necessary organization of personnel, drafting of plans, letting of bids, and so forth, would take up most of the balance of that year. This would mean . . . a minimum of five years from the end of the year 1939 before the St. Lawrence project could begin to produce at all.*"

two Illinois Senators had a special reason for voting "no" because of the Chicago lake diversion question. There were few, if any, Senators in 1934 who voted on the St. Lawrence pact entirely on the issue of more or less electric power.

And there will be few, if any, Senators whose vote would be decided entirely on the basis of the hydro-power issue in 1940, when the new St. Lawrence proposal, formulated by Secretary of State Hull, is expected to be submitted for ratification. Senators Norris, Bone, Schwellenbach, and LaFollette, who are noted for their consistent sentiment against the private electric power industry, all come from states where the agricultural interests of their constituents are such that they would in all probability vote in favor of ratification, even if the power issue were not involved.

Conversely, it is noteworthy that Senator Wagner of New York, who has invariably voted against utility interests when that issue alone was dominant, voted against the treaty in 1934 and will probably vote the same way in 1940. This is clearly not because Senator Wagner esteems the New Deal public power program any the less, but because he is concerned with the interests of the port of New York all the more.

IN other words, the private electric power industry, as such, had few, if any, political champions in the U. S. Senate in 1934. It probably has a handful of sympathetic friends in the Senate now that the political glamour has worn off the power issue and reaction has set in against the continuation of large-scale Federal pump-priming expenditures for public hydro projects. But the fact remains that if the electric power feature were the only point involved in the new St. Lawrence treaty (and it seems to be generally accepted that it is the principal reason for President Roosevelt's persistent support and promotion of it), it would be ratified by the Senate with little difficulty in 1940. It would have been ratified under such circumstances by a land-slide vote in 1934.

Since Agriculture *v.* Transportation seemed to be the principal basis for the difference in opinion among the Senators in 1934, it is obvious that as long as there is a deep seaway feature connected with the new treaty the underlying reason for that opposition will not be diminished when (or if) the treaty comes to a vote in 1940. Republican Senators from agricultural states will continue to vote alongside Democratic colleagues from the Middle West and western agricultural states. Democratic Senators from the eastern seaboard will continue on the whole to join their Republican colleagues in opposing the treaty. A handful of ultra-partisan Senators may jump this way or that, contrary to their respective geographical interests, but there will not be enough of these to change the result. And what will be the result? Let us here get down to the brass tacks of counting noses by analyzing the Senate poll on p. 139.

FIRST of all, will the replacements, as indicated below, detract from the strength of the 1934 vote in favor of ratification? Immediately the eye lights on two regular Republicans, Taft of Ohio and Wiley of Wisconsin, who replaced New Deal Democrats. Yet

SENATE VOTE ON ST. LAWRENCE WATERWAY
MARCH 14, 1934

Names in italics indicate present Senate members who have replaced 1934 Senators

FOR RATIFICATION—46

DEMOCRATS—31

ASHURST (Ariz.)
BACHMAN (Tenn.) *Stewart (D.)*
BANKHEAD (Ala.)
BARKLEY (Ky.)
BLACK (Ala.) *Hill (D.)*
BONE (Wash.)
BROWN (N. H.) *Tobey (R.)*
BULKLEY (Ohio) *Taft (R.)*
BULOW (S. D.)
BYRNES (S. C.)
COSTIGAN (Colo.) *Johnson (D.)*
DILL (Wash.) *Schwellenbach (D.)*
DUFFY (Wis.) *Wiley (R.)*
ERICKSON (Mont.) *Murray (D.)*
GORE (Okla.) *Lee (D.)*
HARRISON (Miss.)
HATCH (N. M.)
HAYDEN (Ariz.)
LOGAN (Ky.) *Chandler (D.)*
MCADOO (Cal.) *Downey (D.)*
MCKELLAR (Tenn.)
O'MAHONEY (Wyo.)
PITTMAN (Nev.)
POPE (Ida.) *Clark (D.)*
ROBINSON (Ark.) *Miller (D.)*
SHEPPARD (Tex.)
SMITH (S. C.)
THOMAS (Utah)
THOMPSON (Neb.) *Burke (D.)*
VANNUYS (Ind.)
WHEELER (Mont.)

REPUBLICANS—14 (FARMER-LABOR—1)

BORAH (Ida.) (deceased)
CAPPER (Kan.)
COUZENS (Mich.) *Brown (D.)*
CUTTING (N. M.) *Chavez (D.)*
FESS (Ohio) *Donahey (D.)*
FRAZIER (N. D.)
GIBSON (Vt.)
JOHNSON (Cal.)
LAFOLLETTE (Wis.)
NORRIS (Neb.)
NYE (N. D.)
ROBINSON (Ind.) *Minton (D.)*
SCHALL (Minn.) *Lundeen (Farm-Lab.)*
SHIPSTEAD (Farm-Lab.) (Minn.)
VANDENBERG (Mich.)

AGAINST RATIFICATION—42

DEMOCRATS—22

ADAMS (Colo.)
BAILEY (N. C.)
BYRD (Va.)
CLARK (Mo.)
CONNALLY (Tex.)
COOLIDGE (Mass.) *Lodge (R.)*
COPELAND (N. Y.) *Mead (D.)*
DIETERICH (Ill.) *Lucas (D.)*
GEORGE (Ga.)
LEWIS (Ill.) *Slattery (D.)*
LONERGAN (Conn.)
LONG (La.) *Ellender (D.)*
MCCARRAN (Nev.)
MCGILL (Kan.) *Reed (R.)*
NEELEY (W. Va.)
OVERTON (La.)
REYNOLDS (N. C.)
RUSSELL (Ga.)
STEPHENS (Miss.) *Bilbo (D.)*
TYDINGS (Md.)
WAGNER (N. Y.)
WALSH (Mass.)

REPUBLICANS—20

AUSTIN (Vt.)
BARBOUR (N. J.)
CAREY (Wyo.)
DAVIS (Pa.)
DICKINSON (Iowa) *Herring (D.)*
GOLDSBOROUGH (Md.) *Radcliffe (D.)*
HALE (Me.)
HASTINGS (Del.) *Hughes (D.)*
HATFIELD (W. Va.) *Holt (D.)*
HEBERT (R. I.) *Gerry (D.)*
KEAN (N. J.) *Smathers (D.)*
KEYES (N. H.) *Bridges (R.)*
MCNARY (Or.)
METCALF (R. I.) *Green (D.)*
PATTERSON (Mo.) *Truman (D.)*
REED (Pa.) *Guffey (D.)*
STEIWER (Or.) *Holman (R.)*
TOWNSEND (Del.)
WALCOTT (Conn.) *Maloney (D.)*
WHITE (Me.)

NOT VOTING—8

DEMOCRATS—7

CARAWAY (Ark.) *Mrs. Caraway (D.)*
FLETCHER (Fla.) *Pepper (D.)*
GLASS (Va.) (Paired "against")
KING (Utah)
MURPHY (Iowa) *Gillette (D.)* (Paired "for")
THOMAS (Okla.)
TRAMMELL (Fla.) *Andrews (D.)* (Announced "for")

REPUBLICAN—1

NORBECK (S. D.) *Gurney (R.)* (Paired "for")

we cannot be very sure of this at all because both Taft and Wiley are from middle western states and may imitate the 1934 example of the late conservative Republican Senator Fess of Ohio. Senator Tobey will probably switch from the stand taken by his predecessor, Senator Brown. The late Senator Borah's successor may also switch.

There is just a chance that two Democratic Senators, Clark of Idaho and Miller of Arkansas, may realign the next vote. Harrison, of Mississippi, is said to be further off the administration reservation than he was in 1934 when he still had hopes of becoming one day the majority leader of the Senate. To sum up, the vote for ratification seems certain to lose one, with from three to six more in doubt on the basis of political record.

Now let us look at the 1934 vote against ratification. Here the replacement shows quite a shift in party affiliation. But the net change is not likely to be decisive. Senator Mead of New York, who replaced Senator Copeland, would probably vote for the treaty on the basis of his past record for 100 per cent administration loyalty, but even that is not too certain. Senator Bilbo, who replaced Senator Stephens of Mississippi, may likewise shift for a similar reason. The same probably will hold true for Senator Hughes, who replaced Senator Hastings of Delaware; and Senator Smathers, who replaced Senator Kean of New Jersey; and Senator Herring, who replaced Senator Dickinson of Iowa. Thus we have five fairly sure gains for ratification out of the 1934 vote against ratification.

IN the doubtful column we must place the vote of Senator Guffey, who replaced Senator Reed of Pennsylvania. In spite of Guffey's staunch New Deal record, he does come from a railroad state with an important eastern seaport. The two new Democratic Senators from Rhode Island, Gerry and Green, might also shift, but it would be against their geographical interests, and in the case of Senator Gerry particularly a shift is not indicated. Senator Truman of Missouri might shift, but it is more probable that he would follow the lead of his colleague, Senator Bennett Clark, who has already announced his outspoken opposition to the St. Lawrence seaway proposal.

Finally, we come to a consideration of the eight Senators who were registered as "not voting" in 1934. Here, on the basis of Washington performance of the present Senate members from the states represented in that list, we must give the treaty six out of the eight and the opposition two (Glass of Virginia and King of Utah).

To sum up this analysis let us first assume that the votes we have listed "doubtful" in both categories will remain as they are, and make a mathematical change of the votes described above as "certain" to shift. This would give a result of 56 in favor of the treaty and 40 against ratification. *In the next place, even if we should resolve all of the "doubtful" votes in favor of ratification, the result would still fall short of the necessary two-thirds majority.*

THIS analysis has been slightly preferential, if anything, toward 1940 chances for the treaty ratification. There are a number of reasons why the vote might be even stronger against ratification than it was in 1934. such as

the increased financial inducements which the administration is said to be making to Canada to participate in the development. This would come in conflict, of course, with the rising economy bloc in the Senate and the increasing sentiment against pump-priming expenditures not directly necessary as a matter of national defense for the United States.

But we can only say at this writing that weighing all discernible political factors from the Washington point of view, the St. Lawrence treaty will not be ratified in Washington in 1940 even though it may be approved at Ottawa.

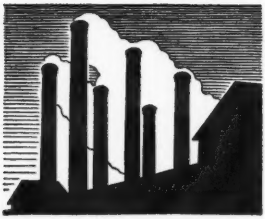
Importance of Determining Cost to the Investor

"... when it comes to the liquidation of most large corporations, one of two things happens: (1) Either the property is sold to someone who buys, having in mind what he can get for the property, which in turn has reference to what someone will be able to make the property earn; or (2) the property is not sold and the company is reorganized—in which event the several classes of investors (bondholders, other creditors, and stockholders) receive new securities in amount and of a kind measured by the value of the property in terms of its reasonably anticipated earnings. And so of the cost of the company's property: Certainly one of the most important immediate purposes of accounting is to show that cost—whether it be the original cost or the cost at the time the company acquired it, or some other cost.

"But why does the investor want to know the cost? Because that knowledge will be useful to him in making an estimate of what the company's property can and probably will yield—that is, its earning power. It has been said—and it cannot be said too often—that one of the most important functions of accounting is to disclose to investors what the management has done with the capital entrusted to it, and with the earnings derived from that capital. In that way the investor learns, in part, the character of the management.

"But why does the investor want to know that fact? So that he may judge what the property of the company, in the hands of that management, will yield by way of earnings, and so that, in some instances, if he be an existing investor, he may take steps to oust an incompetent or dishonest management which, if not ousted, may seriously injure the future earning power of his investment. In forming such judgments, the investor wants to know, among other things, the full truth about how much the company has earned and whether too much or too little of its past earnings have been distributed by way of dividends. For what he wants to know is not merely the future earning power, but how much of the future earnings will and should be available for distribution by way of dividends."

—EXCERPT *from address by Jerome N. Frank, Chairman, Securities and Exchange Commission.*



New Lamps for Old

Rate schedules not the only problem involved in the broad extension of electric and gas service

By M. R. KYNASTON

Those who remember the thrilling Arabian Nights tale of Aladdin and his wonderful lamp may recall that it was a magician (although a very wicked one) who, disguised as a junk man, induced Aladdin's wife to make a rather bad bargain by crying out his offer to trade new lamps for old.

Today, however, there is nothing phoney about the plea of the modern genie of electricity to provide such an exchange. Modern technique, not only in the field of lighting, but for other utility services as well, presents a new challenge to American citizens who would enjoy to the fullest the highest standards of living available to them at reasonable cost.

This is not a utility sales promotion story. On the contrary, the approach is rather in the regulatory direction. There is not a great deal the utility companies can do under prevailing conditions to induce their customers to enjoy the marvelous benefits that are on tap for the asking. The solution lies within the customer's house. He must literally get rid of his old lamp before he can have the new one.

But more about this difficulty later. First, let us glance over these benefits that up-to-date service makes possible. We start out with a paradox. Uncle Sam is spending millions of dollars promoting electrification of rural areas. That is all to the good, but every experienced electric utility operator well knows that, in the future, the real increase in consumption of electricity will come in the urban centers, particularly among the residential groups.

Electric enthusiasts speak of stepping up annual average electrical consumption per customer from 700 to 3,600 kilowatt hours for the more abundant life. But how will this be accomplished? By electrifying farms? Hardly. If half the presently unelectrified farms in the country were put on central station service lines (an extremely optimistic outlook), the net

effect on national average consumption per customer, all other things being equal, would be very small.

And would lower rates drive up consumption? Lower rates undoubtedly help to step up the use of current just as stepping up the use of current makes it possible to lower rates. However, recent studies indicate that after lower rates and "promotional" type schedules have been in effect some time, the climbing consumption curve finally levels out into a plateau and increase in consumption slackens even where rates are further reduced, *unless additional means of using more electricity are widely adopted.*

THUS we learn from the research department of the Washington Department of Public Service, reporting for electric sales in the whole state of Washington (where electric rates are said to have long been the lowest and consumption highest of any state in the Union), that during an 11-month test period privately owned electric utilities in that state lowered the average charge to farm customers from 2.48 cents to 2.47 cents per kilowatt hour. During the same period farm consumption dropped from 1,739 kilowatt hours to 1,695. This is unusual but it indicates that lower rates do not always and inevitably mean increased consumption.

The residential and commercial use of electricity in our large cities will undoubtedly be stepped up in the future. This will come, not through wider distribution of the gadget type of appliance (such as hair curlers or bread toasters, which use current for only a few minutes a day), but through the installation of utility facilities not now employed or even generally conceived.

Take the matter of exterior lighting. Exterior lighting definitely entered the field of art several years ago. Today it is emerging into the field of practical utility. Tomorrow it will be an accepted necessity.

Soon after the discovery of the incandescent lamp by Thomas Edison, the aesthetic possibilities of electric lighting were recognized. It became the handmaiden of the other arts. It made possible much more refined interpretations of the drama—the spotlight—the footlight—the "blue night" light—the "sunbeam light"—the "snow light"—and many other varieties of theatrical lighting have made the producer's task easier and better and have given the playwright more scope and expression. So also with painting—the electric lamp brought new colors and new effects to night scenes for the benefit of the artist's palette.

ABOUT 1929, however, on the Golden Jubilee of Edison's discovery, electric lighting became established as an art in its own right. At the National Electric Light Golden Jubilee, a world-wide tribute to Thomas Edison for his gift of artificial light, there appeared an unusually interesting exhibit.

It was a miniature "Main street" with buildings and shop windows ablaze with the beauty of carefully-thought-out night lighting. It was a demonstration of just what could be done with artistic lighting in the way of making the streets and buildings of our average cities cheerful and beautiful at night.

Since then, much of the promise has been fulfilled as far as downtown

streets of our large cities are concerned. Old-fashioned interior display window lights have given way to riotous lines of colored incandescence, concealed iridescence, and exterior flood lighting that brightens our modern city streets. Just look at the main street in your own city tonight and compare it, in your mind's eye, with the same vista eight or ten years ago.

But much remains to be done—even downtown. Many cities still contain grim and formidable looking old red stone government buildings, such as courthouses and post offices that have to be lit up to a certain extent anyhow. A little artistry at small additional expense could bring out lines and characters of these buildings that could not be suspected from a daylight inspection.

An electric lighting artist at Niagara Falls several seasons ago took the trouble to explain to this writer what could be done with the ugly oblong face of a plain warehouse that looked in the daytime like a great hideous block dotted with rows of monotonously uniform windows. With colored pencils he sketched balconies of glowing red lines, battlemented parapets of blue neon tubing, and tall arches of white lights until the whole reminded one of some weird bastile—a bastile literally built out of lights. Of course, the advent of the neon tubing and the more improved types of flood lights has lent a tremendous impetus to the movement for artistic lighting.

The application of this art frequently requires originality of thought and niceties of distinction. For instance, another electric lighting expert told this writer that in his opinion the illumination of the United States Capitol at Washington was a perfect specimen of artistic illumination. The pure white structure with its great dome brooding in the sky like some vast bubble and flanked on either side by the equally white Senate and House of Representatives is symbolical of that purity of government which is our American ideal. Consequently, the lighting consists of a battery of clear flood lights which bring the whole edifice into sharp relief against the dark background of the surrounding park. A colored light on this building would be clearly out of place. The same might be said of the Washington Monument, bathed in the strong white shafts of distant searchlights.

Unquestionably this tendency toward artistic thought in night lighting, commercial as well as civic, is gaining ground. New York skyscrapers are the

¶ "Electric *enthusiasts speak of stepping up annual average electrical consumption per customer from 700 to 3,600 kilowatt hours for the more abundant life. But how will this be accomplished? By electrifying farms? Hardly. If half the presently unelectrified farms in the country were put on central station service lines (an extremely optimistic outlook), the net effect on national average consumption per customer, all other things being equal, would be very small.*"

subject of constant experiment for the purpose of bringing out architectural beauty to the best advantage. Private home owners are commencing to consider how the lighting of their houses looks from the street instead of limiting their consideration to how it suits the interior.

EXTERIOR lighting of residential grounds for utility as well as appearance is definitely on the way. At present this is generally confined to the holiday season, but already the illuminated garden and exterior-lighted home are beginning to dispel the night darkness in the outlying sections of some cities. There is probably a fertile field for this development in some southern sections where electrical consumption has dragged somewhat behind the northern states. Only the gloom of night prevents certain southern communities from enjoying temperate fall, winter, and spring seasons outdoors—a possibility foreclosed to northerners until man's inventive science develops outdoor heating as well as lighting.

From a more practical viewpoint, artistic lighting costs no more than inartistic lighting of equal consumption. In fact, some of the improved types of flood lights are not only more beautiful, but seem to light up twice the area of old-style bulb signs using the same amount of current.

The advance of aviation promises to carry decorative illumination to the very skies. A manufacturer in a suburb of Chicago, Illinois, now has an attractive neon sign on his roof indicating the name of the city and the direction of the airport to passing aviators. The Army officials at Bolling flying field in Washington have caused that airport to be quite a pretty sight from the air at night. The Woodward airport at LeRoy, New York, has also made extensive use of colored lights in an effort to make the field beautiful as well as conspicuous to night flyers.

BUT the promise of increased usage of electricity does not stop with the outdoors; much remains to be accomplished inside of the home as well. We are familiar with the possibilities of indirect lighting through our daily contact with it in modern cafes and other public places, but why not in our own home?

The first barrier to these improvements in the home is probably psychological. The public mind must be freed from the impression that outdoor lighting or indoor modernistic lighting improvements make private homes appear gaudy, affected, and their owners somewhat eccentric. Naturally, it seems that way at first. Six years ago this writer heard a drug-store owner swear he would never get one of those "freakish" neon signs. Now he has one of the biggest signs of that type in his section of the city, all over the front of his store.

As for interior lighting, the day is at hand when we should not only dispense largely with the top-heavy, feet-trapping, floor lamp in our homes, but the equally inadequate central fixture or wall bracket. The reason we now use the former is on account of the latter. The floor lamp has become a necessity for reading comfort or convenience in doing other close work, because the old immovable fixture never gave us light where we wanted it. The truly modern home dispenses with both while at the

Interior Colored Lighting

"PRACTICALLY nothing has been done in an organized way in the matter of interior colored lighting for private homes in the United States, although it was not entirely unknown in Europe prior to the 'blackout' era. Some day there will be controlled colored illumination just as common in the better American home as changeable draperies are today. Certainly it would throw open a new field for experience in interior decoration."

same time improving visibility and lessening eye strain. Scientifically, there is no reason why every cubic foot of room space cannot be uniformly illuminated without the lighting arrangement being conspicuous at all.

A CERTAIN noted moving picture actress has installed an unusual lighting arrangement in her Hollywood residence that may also point the way to future development. It is a system for color illumination. By a special blending mechanism, the lights are made to change from one shade to another to suit the desire of the occupant of the room, who controls the lighting from a small and unobtrusive switchbox.

That is somewhat unusual for this country. Practically nothing has been done in an organized way in the matter of interior colored lighting for private homes in the United States, although it was not entirely unknown in Europe prior to the "blackout" era. Some day there will be controlled colored illumination just as common in the better American home as changeable draperies are today. Certainly it would throw open a new field for experience in interior decoration.

Edison himself recognized this possibility. Speaking of the incandescent bulb some years after he had invented it, Edison said:

> No invention is perfect, and the incandescent lamp of today is not an exception. Light without heat is the ideal, and that is still far off. The electric incandescent lamp of today is the cheapest form of filament that has ever been produced, but some day it will be cheaper and colder than it is. There is a good deal of truth in the saying that the firefly is the ideal. It is, so far as coldness goes. But its color is against it. You couldn't use a thousand-candle firefly to match colors, and you wouldn't want the insect to light up a street, because his light would be a hideous greenish-yellow. But some day we will get reasonably near the firefly for efficiency without copying his disagreeable color. The task needs much investigation, much research of the kind we did in 1879.

But the barriers to popular acceptance of such improvements are not entirely psychological. The fact is that comparatively few homes in America are physically prepared for them. How

can we ever expect to put over a 1950 type of electric utility service program when many homes have 1905 type of wiring? They just can't take it.

PERHAPS as many as half the electrified homes in America are houses which were wired after they were built, which means in many cases that three, or two circuits (even one in some places) were fished through holes bored in floors and joists to permit a central lighting fixture for each room. That was the 1905-type wiring job and was considered adequate for that period.

Even newer homes built since the use of electricity became a standard home requirement have been inadequately wired in many cases. The old-fashioned central fixture in each room and one or two convenience outlets were the common arrangement and, of course, this has become literally a bottle-neck for the congestion of greater consumption of electricity.

Home owners themselves have tried to overcome this bottle-neck. With the wave of distribution of appliances that swept the United States during the twenties, convenience outlet installations increased. There also appeared the dangerous and inadequate "handy man" outlet installations whereby live wires are stapled all over the place—trying to widen the bottle-neck. Many American homes that pride themselves on being otherwise up to date with stone garages, modern heating plants, and fine motor cars, conceal in their rooms miniature forests of floor lamps, rooted in a tangled undergrowth of live extension wires running out of multiple sockets in a dozen different directions to radios, fans, ice boxes, and the eternal lamps, lamps, lamps.

FURTHERMORE, it isn't simply a matter of getting folks to install more, better, and safer connection outlets. Even where this has been accomplished, the basic wiring systems of many homes are very often inadequate to carry the load placed upon them. Some home owners are operating refrigerators, illumination, oil burners, and miscellaneous appliances (some of them quite heavy in demand) on wiring systems intended only to provide light and not too much of that.

Naturally, this situation is not only inconvenient, but it costs real money in resistance losses. Public service commissioners who are so interested in lowering utility rates, might well look into the possibility of enlightening the consumers on this point. They think they do quite a neat job in obtaining, let us say, a 5 per cent general rate reduction for the consumers in their state—and so they do and generally deserve credit for it. But suppose they were to inform certain customers that they could save as much as 20 per cent on current used if they modernized their wiring? That is certainly something to think tbout. Maybe the future public service commissions will have to be given wider home-wiring inspection powers so that they can protect the consumer against the obsolescence of his own wiring system.

Of course, new homes, if they are to keep step with modern trends, must provide at least adequate outlet facilities and capacity for the freest use of electricity, even though the actual application is not an immediate prospect. If Uncle Sam really wants to step up electric consumption in the home, he could do it more effectively by promoting more adequate wiring, wider ap-

pliance distribution, and modern fixture improvement in our city residences than by building rural lines (conceding that the latter is equally commendable from the social point of view).

AND speaking of the possible increase in regulatory powers, something might also be done in the way of protecting—or at least warning—consumers about cheap but shoddy appliances. If the average citizen who buys some of these bargain appliances (often made under near peon labor conditions in foreign countries) sold in cut-rate drug-stores or elsewhere were told that he would probably lose in current wasted within a few months the difference between his purchase and the price of a standard guaranteed appliance purchased at a reliable dealer's, he might hesitate to bring into his home something which might set it on fire.

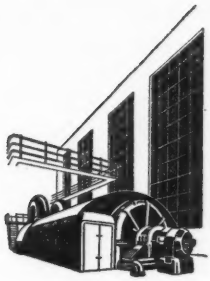
In short, before the American people as a general average can enjoy fully the comforts and luxuries that modern utility service stands ready to deliver, wiring systems must be literally pulled out and overhauled. And, while this paper deals primarily with electrical service, a somewhat similar problem faces the gas industry in its effort to promote its house-heating service. The difference between the 1905 era hot-water heating system (with its hideous, overgrown radiators, and "sewer pipe" feed lines) and the modern fast-circulating, compact heating system is often about 50 per cent of the fuel bill. Put the most efficient boiler made on the end of an old heating system and fuel bills will soar. The gas utility industry has to overcome this condition before it can become America's head janitor.

THUS we have an important practical problem awaiting solution. Patient sales plugging by utilities won't make people tear up their homes in great numbers. It may be that the Federal Housing Administration, which has done much good work along this line, could give the program more punch. Maybe if government officials, utilities, and regulatory authorities think hard enough a plan will emerge. Science has done its part. The new lamp is at hand. But how will we persuade Mr. and Mrs. America to get rid of the old one?

Real Gassy Gas for Norwegian Jallopies

EXPERIMENTS *are being made in Norway in the use of lighting gas as motor fuel, according to a report from the American consulate-general, Oslo, made public by the U. S. Department of Commerce recently. It was expected locally that the war will result in sharply curtailing Norwegian supplies of gasoline, the report pointed out.*

A local engineer recently demonstrated in Oslo an auto having a gas-filled balloon fastened on the roof of the car. The gas from the balloon is conveyed through a rubber hose to the carburetor, which requires only a slight adjustment for the new type of operation. The manufacture on a large scale of gas balloons for autos is now under consideration, the report said.



How the Electric Industry Enriches American Life

For one thing, says the author, it has spent close to ten billions of dollars for construction work in the last eighteen years, greatly augmenting directly and indirectly employment for labor; but that, he shows, is only part of the story of what electric service means to the people.

BY CHESTER MERRILL WITHINGTON

CLOSE to ten billions of dollars has been spent on construction work by the Electric Utility Industry alone during the past eighteen years. Surely this is a huge sum of money and may better be realized when placed alongside the foreign government debt of $11,500,000,000 owed the United States government ten years ago by thirteen European nations, including Great Britain and France. American electric utility companies spent an average of $554,000,000 on their construction programs during each of these eighteen years. A competent authority with whom I discussed the subject estimated construction charges during 1939 as approximately $500,000,000, while in the fulfilment of projected plans the 1940 outlay for this account may extend toward a more normal total.

Just what do these large expenditures mean to the country at large? In their passage from the coffers of this one phase of public utility operation, these funds are widely distributed among the many channels of labor, trade, tax collectors, and, to a lesser extent, to investors in payment of hire of their money without which operations could not long proceed. And in this wise the Industry pays a part of its debt to society.

WERE it possible to trace accurately through the years the disposition of the ten billions of dollars spent by the Industry it would be found that labor had received the lion's share of

this huge amount—not only labor within the Industry itself, but labor employed by the various companies in many industries which benefited from orders placed with them by the utilities — transportation, manufacturing, mining among them.

Rugged outdoor workers in the utilities' ranks engaged in setting up transmission and distribution lines. The engineering and mechanical forces necessary to lay out and direct the many intricate problems arising out of planning, designing, and building generating plants, substations, and the like, naturally have benefited through that employment. So have the hundreds of thousands of American employees of manufacturing companies producing equipment and accessories likewise benefited. Transportation companies were afforded huge tonnages of both raw and finished materials incidental to this business. Last but not least, large sums paid by corporations and individuals in taxes—quite apart from taxes paid by the utilities based on earnings from their own operations—are all important to Federal and state governments.

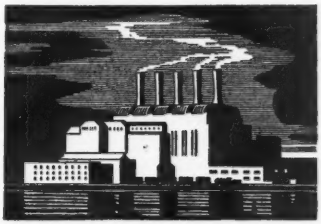
THE all-time high expenditure by the Industry in its construction program to keep pace with expansion and progress in the Art itself was $919,600,000 in 1930. In no small part may this record total be attributed to the Industry's desire to do its full share in trying to help the country out of a depression into which it then was slipping. The same holds true of the $908,000,000 construction bill of 1924. Even though public recognition was given at the time, the desire of the electric light and power industry to be a "good neighbor" quickly was forgotten by the rank and file of Americans.

The utility industry invariably is referred to as being "privately owned." True, its actual stock and bondholders' lists are not identical with the total American population as is the case with such government projects and operations as TVA and Boulder dam developments. Nevertheless it may well be regarded as "public" when it is realized that the $12,000,000,000 investment in operating electric companies is in the hands of 5,000,000 security holders—persons in all walks of life—and that a large proportion of utility bonds is in the hands of life insurance companies and savings banks with their millions of policyholders and thrifty depositors.

BRIEFLY, it would seem that the term "privately owned," when applied to the utility industry, is a misnomer.

It is sixty years since the electric industry was born. Edison perfected his incandescent lamp and made it commercially adaptable in 1879. In 1880 he began the manufacture of incandescent lamps in a small way. In the earlier year Brush began to install isolated plants for arc lighting and in September, 1879, a Brush plant began to serve about a dozen customers from the world's first central station.

The record of accomplishment since that time has been one of steady progress. Its contributions to the growth and life of the nation are unsurpassed by any other industry. From the dozen customers sixty years ago on the west coast (the first central station was located in San Francisco) the number served by the Industry has



Growth of American Industry

"THE story of growth of American industry, the nation's backbone, is synonymous with that of the electric utilities. Their expansion has been intertwined. As electrification extended, improvements developed in general industry. Costs were cut and labor-saving devices were made possible only as electricity was applied as motive power. The combination over the years has been a source of vast income for the nation and its nationals."

grown to upwards of 27,000,000. The $3,400 revenues of that pioneering effort in 1879 (about three months' results) have expanded to more than two billions of dollars in a single year. Naturally the number of employees has jumped from an unidentified few at the start to approximately a quarter-million today.

The birth of the electric light and power industry, indeed, was exceedingly humble. The original capacity of the San Francisco undertaking was a mere 10½ kilowatts, an estimate I made from the meager data available. Contrast this with the 36,000,000-kilowatt capacity of today! During the 60-year interim the United States has been largely electrified but the point of saturation is not yet reached. Rural areas offer the greatest field for future growth, and extension of electrification to outlying farms and sparsely settled districts is proceeding apace.

THAT there is sufficient generating capacity for all present needs and for immediate future requirements is the opinion of well-informed electrical engineers with whom I have discussed the subject. These engineers point out that there will be no need for greater facilities unless and until:

1. Increased population develops beyond its present almost flattened curve of growth;
2. Industry assumes a definite upward trend calling for vastly more power than is needed at the moment.

By the end of 1939 there will have been installed new capacity which will swell generating facilities to a total four times greater than existed at the end of 1917—an increase of 300 per cent in twenty-two years. Even under war-time conditions there is no likelihood, it is believed, of a power shortage. The Industry is too well geared today to have anything of that nature

occur. Whatever agency should be appointed by the government to take charge during a real emergency, the personnel must of necessity be drawn from the Industry because of experience and familiarity with plant and facilities.

Those of our grandparents or parents who were fortunate enough to be within reach of the handful of early generating plants spasmodically dotted here and there had to pay high prices for their electricity, as is the case when something new and worth while is introduced. The equivalent of 25 cents per kilowatt hour is chalked up in the early records of the business. That was exclusively for lighting. The revenue of the Industry for 1938 averaged 4.21 cents per kilowatt hour for household use. Today, however, this category includes an ever-growing list of accessories and gadgets as well as lighting with all of which housewives from coast to coast are familiar.

WHEN Madame uses her electric iron the record-low household rate is applied on her bill. Supplanting the iceman's daily calls and the inevitable disturbance and mess incidental thereto with modern refrigeration serviced by the local utility company is also at the same low rate. Inducement rates and the introduction of countless accessories, and household aids creating heavier loads, are responsible very largely for the steady decline in rates for electricity over the years. This has been most marked during the past decade.

There is no gainsaying the fact that the burden of the housewife has been reduced very materially through the introduction of electricity in her home. No more is it necessary to resort to back-breaking sessions over the old-fashioned wash tub; electric washing machines, within the reach of all, have supplanted that one-time monarch of the kitchen drudgery. Electric toasters, irons, coffee percolators have brought about many changes not the least of which has been the removal of many coal stoves and their accompanying dust and labor from modernized kitchens. Electric curlers for Milady's hair are a delight in many a woman's boudoir; and so on through an exhaustive list of accessories developed and made possible through home electrification.

And when it comes to the cost of operating these bits of modernization alongside expenditures made for other necessities and some "habits," the electric industry more than does its part.

THE story of growth of American industry, the nation's backbone, is synonymous with that of the electric utilities. Their expansion has been intertwined. As electrification extended, improvements developed in general industry. Costs were cut and labor-saving devices were made possible only as electricity was applied as motive power. The combination over the years has been a source of vast income for the nation and its nationals. The workmen's share was increased and their hours of labor shortened. Starting from scratch sixty years ago when fast-rushing streams and steam were the chief sources of power supply, industry in thirty years had been but 9 per cent electrified. Twenty years later, or 1929, in excess of 50 per cent of general industry's power came from electric motors. To what extent further

additions have been made to industrial electrification is not definitely known as figures covering this phase of national industrial life have not been compiled recently.

While all of us have been benefiting—many of us through an entire lifetime—from the marvelous growth of industry, it is undoubtedly the more personal touch with which the average American is concerned. Just what may we attribute to the far-reaching use of electricity for our everyday comfort and well-being? In the first place, only through the vast reservoir of available electricity furnished by the Electric Industry is there a nonbattery radio set in virtually every American home. Whether powered by battery or by your local utility your receiving set would, of course, be valueless without programs; and radio broadcasting, supplying such programs, requires great quantities of electricity from utility companies.

Air conditioning also functions through the use of electric motors; almost every modern home-heating plant utilizes electricity in its operation.

In fact, without a generous continuous supply of electricity we would now be a sorry people as we discover when our service is occasionally disrupted.

The electric utility is a most vital factor in the welfare of the community it serves. It has made and continues to make an outstanding contribution to the lives of the American people.

Economic Distribution

"GOVERNMENT cannot make all men equal. It can, however, make even the distribution of political power and establish standards of security within the limits of the nation's resources and technological facilities. It is perfectly feasible to establish an economic floor below which no American citizen, however otherwise unfortunate, can fall. The ultimate success of democracy will depend upon the maintenance of such a foundation.

"And it is at this point that the future of democracy in America looks brightest. It is true that we have definitely entered a period of social contraction. But it is equally true that we are on the threshold of an era of economic expansion. We have, so far as resources and production facilities go, touched the beginning of a golden age. We are, indeed, entering an age of plenty.

"There is a profound truth in the formula that America's difficulty is less overproduction than it is underconsumption. The problem, therefore, is purely a technical one—the problem of maintaining the purchasing power of the masses of people to the point where the demands upon industry are continuous and heavy."

—PAUL V. MCNUTT,
Federal Securities Administrator.

Wire and Wireless Communication

THE war abroad has imposed on the Federal Communications Commission new and exacting problems in preserving the neutrality of the American air waves, according to the commission's annual report, made public on January 14th.

"Policing of the ether waves," the report stated, must now take cognizance of the rôle assigned to radio in national emergency. For the war in Europe is the first major conflict to be fought on the land, on the sea, and in the air with the inclusion of the ether. The commission further pointed out:

> In the World War there was no broadcast or high-frequency communication problem as we know it today; only wireless. Today the United States has some 800 broadcast stations (not to mention 55,000 amateur stations and more than 5,000 commercial stations), whose air messages filter to more than 40,000,000 receiving sets. And international broadcasts, thanks to the short wave, now cut across time and distance to challenge any claim of isolation.

During the past fiscal year the commission undertook to define the nature of services to be rendered by international broadcast. Subsequent outbreak of the European war brought about the necessity of the commission maintaining contact with other government agencies, as well as with the industry, in dealing with new problems.

In coöperation with the State Department and other Federal agencies, the commission has effected arrangements with other American republics in working out mutual communications problems. The commission is charged with carrying out certain provisions of treaties and international agreements to which the United States is a party.

IN administering and enforcing laws, regulations, and international treaties pertaining to radio, the commission effectively utilizes a field staff. The ether waves are, in effect, patrolled by 27 field offices throughout the United States and its possessions, augmented by 7 radio monitoring stations. Mobile equipment is useful in tracing unlicensed stations and, at the same time, maintaining a neutrality patrol of the ether.

The report makes no recommendations for new legislation with respect to the Communications Act of 1934, as amended. Special activities by the FCC covered in the fiscal year included:

> Inquiry into chain broadcasting policies and practices, begun in 1938. Hearings, which ran seventy-three days, produced nearly one hundred witnesses, 700 exhibits, and nearly 9,000 pages of testimony. The report, when issued, will be the basis of possible new regulations and recommendations to Congress.
>
> Inquiry into the present status of television. In its initial report the commission found television had barely emerged from the "technical" research stage and declared that careful coördination is essential to television's progress.
>
> Report on the special investigation of the telephone industry, pursuant to Congress request. Besides achieving an initial annual savings to telephone subscribers of $12,000,000, the report made specific recommendations to Congress looking to stricter regulation of that monopoly.

Completion of a special study of radio requirements for safety of shipping on the Great Lakes and inland waters, also ordered by Congress. Canadian authorities coöperated in working out mutual standards.

During the fiscal period 7,500 applications for various types of radio broadcast stations were received. Of that number, about 1,650 were for new or increased facilities, and nearly 2,300 were renewals. In that time the commission heard oral argument in more than 100 broadcast matters, and adopted formal decisions in more than 200 such cases. Investigation was made of 265 broadcast stations, and licenses of 8 stations were canceled or otherwise vacated.

Public service is the basic consideration in licensing broadcast stations. "Just as it may be a powerful instrumentality for public good," opined the commission in a recent case, "so a broadcast station has potentialities of causing great public harm, and it is accordingly imperative that the limited broadcast channels belonging to the public should be entrusted to those who have a sense of public responsibility."

THE continued growth of the broadcast industry was reflected in the number of new stations and increased facilities. Twenty-nine new broadcast stations were licensed and 76 applications were denied. During the year the commission increased the license period for standard broadcast stations from six months to one year.

For the 1938 calendar year, 660 standard broadcast stations reported total broadcast revenues of more than $111,000,000, or a net broadcast income of nearly $19,000,000. At the same time these stations employed 23,000 persons with a payroll in excess of $45,000,000.

Notable contributions of the commission during the fiscal period were the adoption of revised rules and regulations governing all radio services, and simplification of the administrative procedural process. In addition to its normal functions, the commission's law department dealt with litigation of increasing volume and importance.

Interest in the amateur field was attested in nearly 50,000 licenses issued to these operators. In addition, more than 15,000 commercial operator licenses were granted. More than 550 new police radio systems—mostly in the smaller communities — were authorized, and nearly 250 forestry radio systems were approved.

In the fiscal year reported, the commission received and studied nearly 17,000 communications tariff schedules. About 1,200 point-to-point telephone applications were examined. In the interests of safety at sea, approximately 16,500 ship radio inspections were made.

Under its mandate to "study new uses for radio, provide for experimental use of frequencies, and generally encourage the larger and more effective use of radio in the public interest," the commission, through its engineering department was said to be investigating many communications techniques and refinements, launching the most comprehensive study of sunspot effect on communications yet undertaken, charting ground frequency wave field intensities, and studying television frequency modulation, directional antenna, facsimile reproduction, interference from electromedical devices, automatic devices to receive distress signals on shipboard, and new types of carrier telephone systems.

* * * *

ON January 10th the U. S. Supreme Court plainly indicated that it would dismiss the appeal of the Bell Telephone Company of Pennsylvania from the $600,000 intrastate toll rate reduction ordered by the commission of that state. This was seen as the result of the refusal of the court to hear the argument of counsel for the Pennsylvania commission or for the National Association of Railroad and Utilities Commissioners (which had filed a brief as *amicus curiae*), after most of the Justices of the court had peppered counsel for the Bell Telephone Company of Pennsylvania with questions plainly indicating doubt as to Federal jurisdiction of that controversy.

The appeal was taken by the Penn-

sylvania utility after a state court had upheld the rate reduction order of the Pennsylvania commission which was based solely on a comparison between interstate long-distance rates and intrastate long-distance rates of the same system. The Pennsylvania commission had ordered the telephone company to reduce its intrastate long-distance rates to the level that would conform with the volume reductions previously made in its interstate long-distance rates—the difference amounting to approximately $600,000 a year.

The state court had ruled that the Pennsylvania commission could order such a reduction on grounds that users of the intrastate long-distance service were being discriminated against, even though the commission made no formal finding as to the unreasonableness of the intrastate rates *per se*.

Most of the questions from the Justices expressed doubt as to the jurisdiction of the Federal courts to hear an appeal from a state commission rate order, where there was no evidence or showing that the rates actually ordered into effect were of themselves unreasonable or confiscatory. The utility counsel had argued his case solely on the ground that the failure of the state commission to support its rate order with findings as to the inherent unreasonableness of the rate schedules displaced was a denial of due process.

THE process in this instance, however, was conducted under authority of state regulatory law, upheld by the state courts. Mr. Justice Stone observed that the Supreme Court "would be kept extremely busy if we were asked to rule on the constitutional mistakes of the state laws." Mr. Justice Black thought that the mere fact that it was more expensive in some instances to place intrastate toll calls over the same system for shorter distances than for interstate toll calls was *prima facie* evidence of unreasonable discrimination. Mr. Justice McReynolds wondered why validity of the state law had not been challenged in the state courts. Examination of telephone counsel strongly indicated that the appeal would be dismissed for lack of a Federal question.

* * * *

CHAIRMAN Wheeler of the Senate Interstate Commerce Committee said early in January that he would favor the proposed telegraph consolidation if adequate safeguards were set up to protect labor and prevent monopolistic practices. Mr. Wheeler said:

> It is a natural monopoly and at the present both Western Union and Postal are destroying each other. However, I would have to know that labor will be taken care of before I approve consolidation. The consolidated organization would still compete with the telephone, air mail, and radio, and this competition must be protected.

The American Federation of Labor served notice last month that it would oppose the proposal for a consolidation of the Western Union and Postal Telegraph companies. A statement issued by the New York headquarters of the Commercial Telegraphers Union, the AFL affiliate in the field, said:

> The question of consolidation of Postal Telegraph with Western Union poses a labor and unemployment problem of great proportions. Western Union has about 45,000 employees in the country, Postal about 15,000. Postal is a bankrupt company, with pay scales in some cases as much as 50 per cent below those prevailing at Western Union.
>
> The American Communications Association, affiliated with the CIO, has a union contract with Postal on a national agreement basis. The Commercial Telegraphers Union, on the other hand, is concededly the dominant trade union in Western Union.
>
> The CIO organization has been engaged in feverish activity in favor of a merger of the two companies—and merger in a hurry—in spite of the fact that, according to the United States Bureau of Labor Statistics, probably 15,000 jobs would be wiped out by a merger.
>
> The merger plan of the CIO is being promoted by it in an effort to find a place to put its Postal membership in the face of the acknowledged uncertainty of Postal being able to remain in business.
>
> Western Union employees are naturally filled with intense apprehension as to their employment security. They now have jobs and a measure of security, albeit susceptible of improvement, in a solvent and going concern which is likely to remain in the telegraph business for many years to come.

They cannot calmly view a suggestion that they shall, in large numbers, give up their jobs so as to make room for Postal employees and to enable the self-seeking American Communications Association to save its face as a national labor organization.

Neither can the employees of Western Union consider with equanimity the threat to their wage standards by the infiltration into Western Union of the pittance-wage policy of Postal Telegraph.

Because of the mounting opposition from labor circles, in view of the controversial character of the proposed legislation in the light of approaching general elections, it was believed by Washington observers unlikely that Congress would hasten to dispose of the FCC merger recommendation at the current session. Senator White of Maine, ranking Republican member of the Senate Interstate Commerce Committee, expressed his desire to have the domestic telegraph report considered at the same time as the international communications section which has not yet been completed by the FCC. This may delay the committee at the outset in making progress with any telegraph merger legislation.

* * * *

HEARING on complaint of the department of public service of the state of Washington against rates charged by the Pacific Telephone & Telegraph Company, serving the states of Washington, Oregon, California, Nevada, and a portion of Idaho, was ordered by the Federal Communications Commission on January 8th. Commissioner Paul A. Walker, who has handled this case, will sit at the hearing at Seattle at 10 o'clock on February 26th and at San Francisco at 10 o'clock on February 29th.

In a formal complaint filed with the commission on June 28, 1939, the department of public service alleged that the rates, charges, and practices of the Pacific Telephone & Telegraph Company in interstate service between points within that state and points in the other states it serves "are unjust, unreasonable, excessive, and unreasonably discriminatory" to patrons within the state of Washington.

On August 8th the commission, having also under consideration the interstate rates of the Pacific Telephone & Telegraph Company and its wholly owned subsidiaries, Bell Telephone Company of Nevada and Southern California, ordered an investigation into the "rates, charges, classifications, services, and practices applicable to the interstate communication service within the territory served by these companies."

On November 15th the commission assigned Commissioner Walker to the case. The hearing is set on the basis of evidence presented, and in coöperation with the regulatory authorities of the states concerned. Each state regulatory body has been invited to designate a representative to sit with the presiding commissioner at the hearing.

Meanwhile, out on the West coast the Pacific Telephone & Telegraph Company requested the Washington Department of Public Service to suspend its ruling on proposed statewide changes in the telephone rate structure for seven months. The company agreed to waive the previously established "deadline" for statutory disposition of its originally proposed rate changes.

Attorney Raymond D. Ogden, representing the Seattle Telephone Users' League, said subscribers who have been fighting the rate changes and representing the city of Seattle, King county, and the state "have saved subscribers" $3,200,000 by delaying rate increase.

* * * *

AS the 1½ per cent city wage tax went into effect in Philadelphia on the first of the year, nearly 6,000 employees of the Bell Telephone Company who live or work in the city, joined the fight against the levy. Two suits by wage earners, backed respectively by the CIO and AFL, are contesting the validity of the tax in the state courts.

Telephone workers through attorneys for their respective employee groups announced that they have filed protests with the Bell Telephone Company of Pennsylvania against deduction of the tax from their wages and have warned the company it would be held responsible for any loss suffered by employees in the event such deduction should be made.

Financial News and Comment

By OWEN ELY

The Associated Gas Bankruptcy

WITH dividend and interest income from its sole subsidiary (AG&E Corporation) shut off by recent SEC order, Associated Gas & Electric Company filed a petition for reorganization in the Federal District Court at Utica, January 10th. The AG&E Corporation followed suit one day later. Federal Judge Bryant ordered hearings in Utica February 27th to consider objections to any trustee appointed in the meantime, but a hearing on the court's jurisdiction was to be held January 23rd. It is quite possible that the SEC will be made trustee, but Associated interests hope that a man familiar with the system may become cotrustee.

AG&E Company owns $73,419,797 debentures and notes of the Corporation, together with the entire capital stock. However, the notes are subordinate to all long-term debt of the Corporation held by the public, which totaled $176,580,845 at the end of 1938. This would seem to give holders of the Corporation bonds a much stronger claim on the system portfolio than Company bondholders, whose rights seem dubious except for historical considerations. The Company's bonds have been selling recently around the same general level as the junior Corporation issues (the debentures of 1978) but the fact that the latter are unlisted and less available for bank loans may be a market factor.

There was perhaps less fear of bankruptcy at this time than on many past occasions. The two top companies have for many years been "hovering on the brink," due to overcapitalization, and were probably saved only by the financial and legal wizardry of Howard C. Hopson. Mr. Hopson's serious illness and the recent resignation of President Mange, together with other changes in the official line-up, doubtless proved a handicap in attempting to maintain solvency.

WHILE the primary cause of bankruptcy may have been refusal of the RFC to grant a loan to take care of the Corporation's March 1st $8,500,000 bond and interest maturity, this obstacle should not have proved insuperable, since bank loans were relatively small and the system had ample collateral. The real cause was doubtless the SEC order questioning "up-stream" payments of interest and dividends to the top holding company. This device (the right to forbid payments out of unearned surplus) has been applied to several other utility systems in the past year, but with less disastrous results than in the Associated case. The SEC first lopped off the income received by AG&E Company from the Corporation, and then threatened to cut off the latter's income from one of its three important subholding companies. Another subholding company is also threatened with loss of dividends from one of its best operating units, Metropolitan Edison.

Apparently the SEC was dissatisfied with Associated's plans for integration. While the Associated system has in recent months issued a number of publicity releases regarding plans for merging various groups, selling isolated properties, etc., it apparently accomplished little toward meeting SEC desires for a substantial write-down of top holding-company capitalization.

The Associated Company, in its application to the court for reorganization under Chapter X of the Chandler Act, adopted the unusual procedure of filing

a new plan for merger and recapitalization of the top holding companies, superseding the two plans which had proved unacceptable to the SEC. Copies of the plan are not yet obtainable; but, according to press reports, the new Associated Gas & Electric Corporation would be capitalized with $111,699,782 long-term debt (principally 20-year collateral 4½s), 11,143,910 shares of no par common stock, and 7,189,190 warrants entitling holders to purchase one share of new common stock at $12.50 a share within five years. Holders of the numerous classes of bonds, "obligations," preferred and common stock, scrip, etc., of the two Associated companies would receive new bonds and/or common stock (or warrants) in varying proportions. The Corporation 8s due March 15th would be paid in cash or extended for five years with a first lien. Following reorganization, voting power would be held by present security holders on the following approximate basis:

AG&E Company debentures	24%
" " obligations	10
" " scrip	3
" " preferred stock	5
AG&E Corp. conv. debentures 1973	7
" " income " 1978	47
Utilit. Employees Securities Co. all securities	4
	100%

The plan would reduce present bond issues (including obligations and scrip) by nearly 60 per cent, but whether the amount of the reduction or the terms of exchange would prove satisfactory to the SEC, the court, the Treasury Department (which holds tax claims against certain securities), and the various protective committees now being organized, remains to be seen. While it was, no doubt, an admirable gesture to present the court with a ready-made plan, there

NUMBER OF TIMES ASSOCIATED GAS SYSTEM INTEREST CHARGES WERE EARNED
(ON OVER-ALL BASIS)
(Twelve Months Ended September 30, 1939)

Operating Companies and Subholding Companies	
Interest, preferred dividends, and minority interest	1.41
AG&E Corporation	
8% bonds due 1940	1.34
Debentures due 1973	1.28
Debentures due 1978	1.11
AG&E Company	
Fixed interest debentures	1.01
Income debentures	1.01
Scrip certificates	1.00

ANALYSIS OF ASSOCIATED GAS SYSTEM REVENUES AND EXPENDITURES
(Twelve Months Ended September 30, 1939)

	Millions of Dollars	*% of Total Revenues*
Total System Revenues	$133.6	100.0
Expenses, charges, etc.:		
Operating Companies and Subholding Companies		
Operating expenses	56.4	42.3
Maintenance	8.5	6.4
Depreciation	13.4	10.0
Taxes	18.1	13.5
Interest, etc.	21.1	15.8
Preferred dividends	4.7	3.5
Minority interest	.5	.3
AG&E Corporation		
Expenses, taxes and charges	7.2	5.4
AG&E Company		
Interest and amortization	3.6	2.7
Balance of income	.1	.1
	133.6	100.0

is naturally some skepticism regarding its chances for survival. Moreover, the attempt to salvage a substantial amount of bonds, together with an approximate 43 per cent equity interest for security holders of the top holding company, seems overoptimistic, considering the rather slender claims on system assets indicated by present priority rights.

REGARDLESS of the problem of clearing up the débris of the two top companies, the three subholding companies, Associated Electric Company, General Gas & Electric, and NY PA NJ Utilities, seem reasonably sound, as indicated in the accompanying tables. However, the SEC apparently intends to dig deeper into the system structure, possibly throwing Associated Electric Company into bankruptcy.

From a geographical point of view, about two-thirds of system revenues are obtained in the adjoining states of New York, Pennsylvania, and New Jersey (NY PA NJ and Associated Electric Company). These two systems, if thrown together, would form a well-integrated system, since nearly all properties are 100 per cent controlled. General Gas, whose properties are scattered along the Atlantic seaboard from Delaware to Florida, might have to be segregated under § 11, and a few isolated units in Ohio, Indiana, Kentucky, etc., will doubtless have to be sold. However, when the final smoke of battle is cleared away the northern nucleus of the Associated system should remain undisturbed as a sound group of operating properties.

Consumers Power Case Raises Issue of Capital Set-up

AFTER perusing the 80-page SEC decision on the Consumers Power bond issue (handed down December 28th but distributed around mid-January), utility executives are wondering whether the industry faces new problems in the raising of capital for improvement.

Many executives have contended that they are unable to balance their capital structures by issuing common stocks, due to New Deal policies which have depressed utility equities. But in this case, with outstanding stock wholly owned by the parent company, Commonwealth & Southern, the sale of common stock to the public (the desirability of which seems implied in the commission's decision) would raise new problems of minority interest, thus confusing the integration program under § 11. The case is therefore quite different from those in which part or all of the common stock is already in the hands of the public, with a seasoned market.

The decision in the Consumers Power Case seems to indicate that the commission was irritated over the Otis & Co.-Norris-Willkie episode, and took this opportunity to find fault with the issue. Certainly the commission's previous decisions did not indicate that it was particularly concerned about the proportion of common stock and surplus to total capitalization.

For example, in the case of the huge Pennsylvania Power & Light issue last August, only 9 per cent of total capital was represented by common stock. More recently the SEC approved the finance programs of Public Service Company of Indiana and Northern Indiana Public Service Company, both of which had stock ratios which were approximately one-half that of Consumers Power Company.

While the SEC apparently left the door open for Consumers Power to apply for a rehearing, the status of the case still remains confused. Mr. Willkie's statement that he may be compelled to cancel $10,000,000 expansion plans, reducing employment, has resulted in considerable press criticism and a move is reported to consider congressional investigation of SEC tactics.

In view of the interest in capital structures aroused by the decision, the accompanying table showing the capital set-up (as of December 31, 1938) of leading utility operating companies should be of interest.

	Millions of Dollars				Percentages		
	Funded Debt	Pref. Stk.	Com. Stk.	Total	Funded Debt	Pref. Stock	Common Stock
Large Independent Electric-Gas Operating Companies							
Boston Edison	$53	...	$106	$159	33	..	67
Bklyn. Union Gas	49	...	47	96	51	..	49
Commonwealth Edison	430	...	238	668	64	..	36
Cons. Edison of N. Y.	298	200	493	991	30	20	50
Cons. Gas, El. L. & P. (Balt.)	67	22	50	139	48	16	36
Detroit Edison	142	...	155	297	48	..	52
Lone Star Gas	20	...	89	109	18	..	82
Long Island Lighting	35	25	7	67	52	38	10
Pacific Gas & Elec.	290	134	203	627	46	21	33
Peoples Gas Lt. & Coke	71	...	77	148	48	..	52
Southern Calif. Edison	155	87	96	338	46	26	28
Average					44	13	43
Large Operating Companies In Holding Company Systems							
Comm. & Southern System							
Consumers Power	124	71	47	242	51	30	19
Alabama Power	97	36	54	187	52	19	29
Georgia Power	125	43	98	266	47	16	37
Ohio Edison	79	30	19	128	62	23	15
American G. & E. System							
Appalachian Elec. Power	81	33	38	152	53	22	25
Ohio Power	68	20	26	114	60	17	23
North American System							
Illinois-Iowa Power	112	30	26	168	67	18	15
Cleveland El. Illum.	40	25	53	118	34	21	45
Union Electric	115	21	69	205	56	10	34
Wisconsin El. Power	68	33	24	125	54	27	19
United Gas Impr. System							
Conn. L. & Power	50	7	49	106	47	7	46
Phila. Electric.	173	40	150	363	48	11	41
Columbia Gas & Elec. System							
Cincinnati G. & E.	44	40	38	122	36	33	31
Standard Gas & Elec. System							
Duquesne Light	70	28	86	184	28	15	47
Northern States Power	99	28	102	229	43	12	45
Amer. Power & Lt. System							
Florida Power & Lt.	75	19	36	130	58	14	28
Montana Power	61	16	63	140	44	11	45
Associated Gas & El. System							
New York State E. & G.	59	3	60	122	49	2	49
National Power & Lt. System							
Penn. P. & L.	131	61	20	212	62	29	9
Engineers Public Serv. System							
Puget Sound P. & L.	68	34	34	136	50	25	25
Electric Power & Lt. System							
Utah Power & Lt.	52	25	33	110	47	23	30
American Water Works System							
West Penn Power	56	30	34	120	47	25	28

New Financing Slows Down

POSSIBLY due to the obstacles encountered by Consumers Power, the continued sniping at the investment banking fraternity by New Dealers in the TNEC hearings, the Associated Gas bankruptcy case, and the disappointing stock market, plans for utilities' financing appear to be slowing down. During 1940 thus far, offerings have consisted of the reduced Consumers Power issue, the American Gas financing, and $3,750,000 Ohio Water Service first 4s of 1964, offered at $103. The $26,000,000 Kentucky Utilities Company first mortgage bonds, together with $6,000,000 serial debentures, are expected shortly.

Dayton Power & Light Company (Columbia Gas system) has taken initial steps toward registering $25,000,000 first 3 per cent bonds due 1970, proceeds of which will be used to redeem $19,015,010 of 3½ per cent refunding bonds due 1960, with the balance reimbursing the treasury for capital expenditure. The 3½s were issued in 1935 and the AAA rating assigned by Moody's is explained by the large earnings coverage, 4.71 times in 1938 and 5.55 in 1937. The bonds will be underwritten by a large Morgan Stanley & Company group. However, a member of the city commission of Dayton has requested the Ohio Public Utilities Commission to "use its broad powers to require competitive bidding," which may delay the SEC decision at Washington. A show cause hearing was set for January 24th to decide whether there was "arm's length bargaining."

This is probably the first instance in which a 3½ per cent utility bond has been redeemed. About $2,000,000,000 of 3½s, 3¾s, and 4s have been issued by utilities lately. It is also reported that Public Service Electric & Gas is considering refunding a privately held 3½ per cent issue. A number of 4 per cent issues have been refunded and several 3¾s (the latest being Consumers Power). In considering what proportion of the remaining issues might be eligible for secondary refunding, it would probably be necessary to exclude most issues with call prices above 105 (because of the high premium required on the new issue) together with issues selling currently below the redemption price. Remaining issues would probably not amount to a very big total. Moreover, the bond market may again prove susceptible to wartime fluctuation—as occurred last September, resulting in a 3-month cessation of offerings.

Held-over utility registrations now include the ones listed below.

Corporate News

PUBLIC Service Corporation of New Jersey has authorized a construction budget of $17,500,000 for 1940 compared with $23,500,000 last year (the latter including $12,000,000 for a new unit at Burlington).

Further progress toward acquisition of the Interborough-Manhattan properties by New York city was recently indicated by formal advertisement of the notice of sale of Manhattan Railway properties.

Chairman Dahl and President Menden of Brooklyn-Manhattan Transit Company warned security holders that failure

Borrower and Underwriter	*Coupon Due*	*Amount*
Jersey Central P. & L. Co. 1st	1964	$39,000,000
Jersey Central P. & L. serial notes The First Boston Corp.	1940–49	3,225,000
Penn. Water & Power Co. 3¼s White Weld & Co.	1970	10,962,000
New England Power Co. 1st. Competitive Bidding	1969	9,650,000
Marion-Res. Power 1st 3½s White Weld & Co.	1959	7,750,000

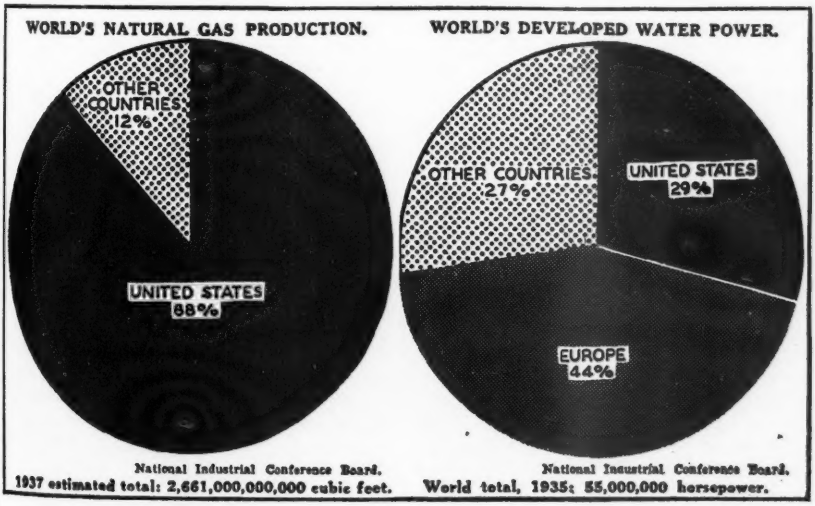
of the city to acquire the properties will involve either receivership or a voluntary recapitalization to extend debts, reduce charges, and readjust stock. Letters were sent to security holders of the Brooklyn & Queens Transit Corporation, who have proved recalcitrant under leadership of the Ewen committee. Suit has been brought against the B&QT Company for payment of Brooklyn City and Newtown Railroad first consolidated 5s which matured July 1st last year; bondholders were offered only $750 under the plan.

In contrast to the lag in its interim statements, American Telephone has already issued a preliminary earnings report for the calendar year (partly estimated for December). Earnings amounted to $9.23 a share compared with $8.16 in 1938. On a consolidated system basis for the twelve months ended November 30th, earnings were $10.11 compared with $8.21. In the quarter ended November 30th, $2.97 a share was earned compared with $2.29, despite an increase of about $3,625,000 in taxes for the quarter.

According to press reports, American Telephone and Telegraph Company is willing to coöperate in the proposed merger of Western Union and Postal telegraph facilities by considering the sale of its own telegraph properties to the merged companies. AT&T telegraph business grosses about $25,000,000 a year, including the networks of press wires and teletypewriter service.

The assets of Utilities Power & Light Corporation, $300,000,000 holding company, were transferred January 2nd to the Ogden Corporation. However, counsel for the common stockholders are attempting an appeal to the circuit court. Holders of the 5½ and 5 per cent debentures (other than Atlas Corporation) were given the option of taking either preferred or common stock, in the ratio of 8¼ shares of new common for each share of new preferred.

General Telephone is planning to retire its $3 convertible preferred stock at $50 per share, and the $6 preferred stock of General Telephone Allied Corporation at $106.50 per share, from the proceeds of the sale of a new $2.50 preferred stock at close to a 5 per cent basis. Redemption of the subsidiary's preferred stock would permit payment of dividends on the common, which is entirely owned by the parent company.



What Others Think

Taxation *versus* Regulation As a Factor in Utility Rate Making

A PUBLIC utility company pays no taxes itself—they are all borne by the consumer. This is the sweeping generality which often finds expression in discussions of public utility regulation and economics. To some extent it is quite justified. Rates charged by a public utility are determined by commissions who are supposed to fix them in such a way as to meet all operating expenses—including taxes—plus a fair return.

But by using the same reasoning, the consuming public pays *all* industrial taxes. Industrial ownership in competitive businesses must absorb the amount laid out for taxes in the prices charged for their commodities or services. Over and above this, industrial management, in general, must obtain a profit or it will be eventually forced out of business. And so, when we buy groceries, clothing, tobacco, and so forth, we—the consuming public—pay our proportionate share of the taxes levied on groceries, clothing, and tobacco, respectively, just as we pay gas, electric, and telephone taxes through the medium of our monthly utility bills.

There is a difference, of course, between the forms of registering the revenues derived from our purchases as between utility and nonutility transactions. Because it is a regulated monopoly, utility operating expenses — including taxes—must be formally recognized, as such, by rate-making authorities. And a reasonable return on rates calculated to yield an additional reasonable amount of profit must be allowed (although not "guaranteed," as some writers on the subject erroneously express themselves). The grocer, on the other hand, simply figures out his own price list to cover taxes and other expenses, and as much additional profit for himself as possible.

BUT during the recent depression, special taxation of utilities emerged in some cases as a sort of substitute for regulation. An interesting discussion of this situation was contained in a recent article in *The Journal of Land & Public Utility Economics* (November, 1939) by Jesse V. Burkhead, of the faculty of the University of Wisconsin. It was entitled the "Incidence of Public Utility Taxation."

Mr. Burkhead agrees that, as a matter of legal theory, taxes constitute no burden on utility ownership because the management can always demand a rate schedule that will allow a return over and above what is necessary to compensate for tax payments. As a practical matter, however, he says there are two exceptions to the validity of this generality:

(1) The lag inherent in the regulatory process can impose the burden of taxation on management during a very substantial period which elapses between the imposition of the tax by the legislative board and the consideration of that tax by a regulatory commission for rate-making purposes. A variation of this condition arises during an economic depression when utility revenues fall, but operating expenses fall in smaller proportion, and where a utility is unwilling to demand an increased rate schedule for obvious reasons under such circumstances.

(2) If the full monopoly price is already being charged for a utility's product, no price change will increase the net revenues. Thus, where a utility's rate structure has already reached a point of diminishing return (such as during the recent depression when desertion of patronage in some cases actually required rate reductions regardless of net

earnings), the increased tax burden imposed by the legislatures inescapably falls upon the ownership. The theoretical right of a utility to seek a rate increase is of no value in such a situation.

It was not until 1920 that the conventional concept of "regulated incidence" became established for all taxes, including income taxes, paid by utilities. This doctrine was generally accepted, says Mr. Burkhead, until the beginning of the depression, but "since that time it would seem that increased utility taxes have operated to place a burden on ownership rather than on the utility's customers." Thus increased taxes have created a burden because they have lowered the rate of return on a utility's investment.

Mr. Burkhead goes on to state that most of the increased tax burden on utilities came as a result of the search by both state legislatures and Congress for more stable revenue sources, which in effect came to mean taxes on consumption. Thus, we have the 3 per cent Federal excise tax on electric energy and the adoption by many states of gross revenue taxes applicable to utility companies. And yet, under the prevailing depression circumstances, utility rates could not be raised in proportion. The trend generally was in the opposite direction.

Mr. Burkhead concedes that eventually all these taxes will come out of the revenue paid by utility customers. But the burden of these new taxes came to rest in the first instance on utility ownership. He added that if rate schedules had been revised to keep the return of utility investment in line with general cost trends and if taxes had not been increased, utility customers today would be enjoying much more service at much lower rates.

And so, as a characteristic of this period of changing regulatory relations, Mr. Burkhead declares that public service commissions came to rely less on rate regulation through valuation and more on regulation through bargaining and competition. As an example he points to the Wisconsin commission which has used formal valuations in only three or four rate cases since the reorganization of that commission in 1931.

This author also states that despite improvements made in the technique of regulation during recent years, the greatest obstacle to effective regulation has been the attitude of the courts towards the work of the commissions. This has had a tendency to make utility rates less elastic than they should be. It causes commissions, under the pressure of courts, to cling to a given rate of return because it has received previous judicial sanction as "reasonable." Mr. Burkhead added:

> When economic conditions are relatively stable, lags in the regulatory process have less significance than during times of rapidly changing cost and income structures. In such periods, of which the last decade is a notable example, taxation becomes an important instrument of regulation, returning to the community excess earnings which would otherwise be retained by the utility. An ever-present danger, of course, is that the legislature will act unreasonably, and that taxes used to supplement the regulatory process will become oppressive. In such a situation, resort to the courts might bring relief only after the utility's financial condition had been greatly impaired. To say that such a situation should be guarded against would be putting the case mildly. Another danger is that taxes, imposed at a time when there is no possibility of obtaining lower rates, may, at a later date, be used by the utilities to defer rate reductions which would benefit the entire community.

He said that there are two possible motives for the imposition of special taxes on utilities: (1) A deliberate addition to the fiscal system in which the feasibility of the utility tax should be considered in relation to other sources of revenue; (2) as a sort of supplement or even a substitute to fill in the gaps in the regulatory process in an attempt to insure that utility owners will receive no more than a fair return on their investment.

Mr. Burkhead then summarized four possible conditions of relationship between utility regulation and utility taxation. The first would be good regulation with no special utility taxation

other than general business taxes. This would be the public service commission's ideal, but can be obtained only where the courts allow commissions latitude and where economic conditions are relatively stable. However, this set-up enables utility customers to obtain abundant service at low cost even though it requires legislatures to abandon utility taxes as a source of emergency revenue.

The second condition would be where regulation is poor and there is no special utility taxation. This is reviewed as "the least desirable alternative." The third condition is poor regulation but with reasonable and temporary special taxes. This is regarded as a practical necessity under the circumstances, but "every attempt should be made to perfect the system of regulation and, as this is done, special taxes on utilities should be repealed."

The fourth condition would be poor regulation plus the imposition of unreasonable, permanent taxes. This is regarded as a "possible outgrowth" of the third condition. In other words, there is grave danger that legislatures may be unable to break the habit of devising special taxes for utilities. In short, Mr. Burkhead regards the first condition as the best, but adds:

> . . . During times of rapidly changing economic conditions when regulation becomes inadequate, temporary and reasonable special utility taxes may well be used to supplement regulation.
>
> To resort to taxation as a means of regulation by no means implies that the usual regulatory machinery is useless; it does mean that under certain conditions the ordinary processes of regulation are unable to cope with the problem. But if the result is to be in any measure satisfactory, the fact must be recognized that the power of regulation and the power of taxation are not mutually exclusive, but that both are designed to serve the entire community.

According to this view, taxation and regulation used together can more equitably resolve the conflicting interests in public utility relationship.

Is Federal Action Vital to Economic Freedom?

THE question of governmental action *versus* free enterprise was termed "a false and mythical issue" by David E. Lilienthal, power director of the Tennessee Valley Authority, in an address at the Columbia Graduate Economics Club at Columbia University in New York city on January 15th. He said:

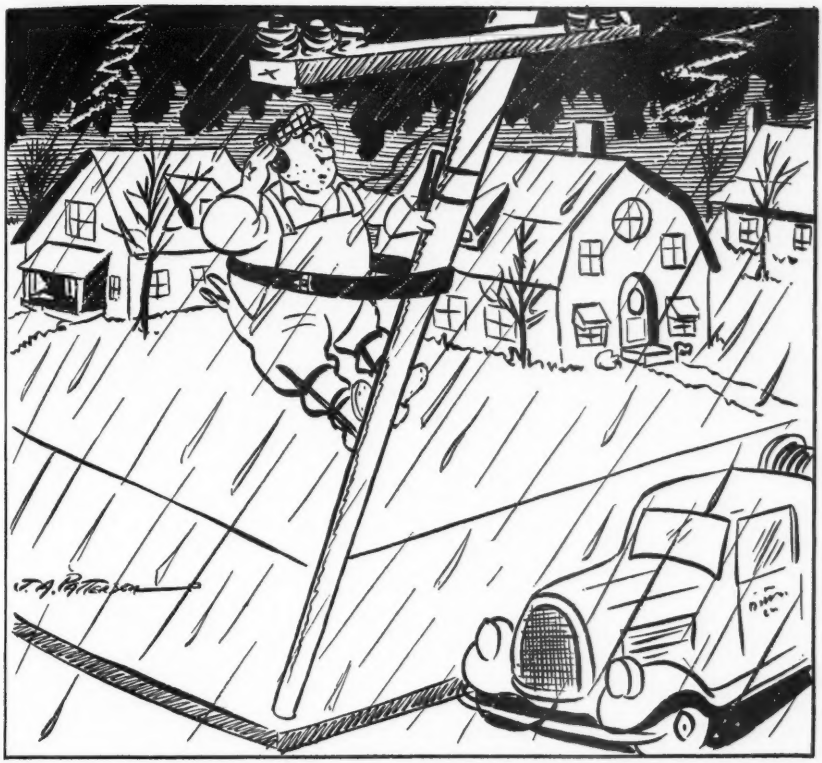
> Only an economic illiterate would deny that to secure and promote economic freedom governmental action has often been appropriate and necessary, and only a doctrinaire would assert in the face of facts everywhere about us that private business is the sole fountainhead of economic progress.

The chief means by which the TVA hopes to benefit the country were summarized by Mr. Lilienthal as follows:

> By rebuilding and fortifying the soil upon which our hopes of a rising standard of living depend, and by methods which stimulate and strengthen private enterprise of farming.
>
> By technical research resulting in new industrial processes and machinery, and by making available and interpreting the facts concerning the region's resources for use in the initiation and growth of private enterprise. By establishing and securing adoption of a mass-consumption pricing policy for electricity.
>
> By controlling destructive flood waters and furnishing an improved waterway for the movement of commerce and for public recreation.
>
> By the regional integration of agencies, public and private, Federal and state, upon which future economic growth depends.

After describing in detail the work planned under each of these divisions of enterprise, Mr. Lilienthal said:

> Sometimes you may add two and get zero. Thus, technical research in the processing of farm raw materials, without regard to the life of the soil from which the raw



"THE IDEA—CUTTING OFF MY CALL TO THE DRESSMAKER'S; YOU REPAIRMEN NEVER THINK OF ANYBODY'S CONVENIENCE BUT YOUR OWN!"

materials come, may result in an exhaustion of the soil. That may mean the early death of the manufacturing operation which relies upon those farm raw materials. The desolate, abandoned sawmill towns of northern Wisconsin and Michigan, in the midst of cutover forest land, are a bitter demonstration that the addition of an industrial operation and a great natural resource may, if coördinated planning is absent, prove that two and two sometimes are zero. An agency responsible for the general increase of economic well-being in a region is under a duty to see that such two activities as these are carried on so they will not cancel out each other, but will, by integration, add a plus value.

Likewise, an agency, public or private, whose sole responsibility is to supply electricity to farmers, might push as hard as possible for an increase in electric revenues regardless of how the farmer used the power. The TVA, having not only a business responsibility for rural electric revenues but an even greater public responsibility for regional security, is not free to concentrate alone on building up revenues. The pressure on farmers to pay the electric bill for conveniences might mean less funds available for the protection and increased fertility of the soil.

He concluded that TVA's contribution to expanding economic opportunity is aided by its rôle as a regional planning agency.

Mr. Lilienthal did not discuss the issues sometimes raised in this connection as to whether some of the functions assumed by the Federal government, commendable and necessary in themselves, might not be as well accomplished in a different way without direct Federal

responsibility. Nor did he take up the long-range question of whether expanding government activity on a nonprofitable tax supported basis might eventually undermine the ability of a contracting private profit economy to support the former with its tax revenues.

He intimated, however, a conviction that there was nothing inherently inconsistent about some of the nation's enterprise continuing to exist part socialized and part free. He said that the idea that "government never produces or adds to wealth . . . is sheer nonsense." He cited the New York city subway lines and the public highways.

The Need for Flexibility in Utility Rate Making

IT is generally conceded that no system for utility rate making can be satisfactory in the long run unless it protects the legitimate interests of the community, the interest of investors in utility securities, and the consumers of utility services. It follows from this as a generality that any rate-making plan must assure the utility a profit sufficient to attract the capital required for the continued expansion of its service, and yet be sufficiently responsive to changing economic conditions to prevent an undesirable spread between the level of utility rates and cost of rendering utility service.

Elaborating on this guiding principle, Dr. C. O. Ruggles, professor of public utility management, Harvard School of Business Administration, in the winter (1940) issue of *Harvard Business Review,* gives us the second of his 2-part analysis of the leading economic aspects of modern utility rate making.

Professor Ruggles, while giving respectful consideration to fairly recent arguments in favor of the prudent investment theory of valuation (notably the study by E. M. Bernstein, "Public Utility Rate Making and the Price Level," 1937), is unable to go along entirely with that doctrine. Prudent investment as a rate base, he says, must be ignored whenever striking price changes occur that vitally affect the market for utility service or when an advance in the arts either materially lessens or eliminates the demand for a given utility service. He states:

> There should be no false hopes held out to investors in public utilities that they are to be protected from risks to their investment. Neither the use of prudent investment nor that of reproduction cost as a rate base will eliminate the risks to capital which may result from booms and depressions or from a more permanent lessening or even elimination of the demand for a given utility service.
>
> To admit that a rate of return should vary and thus attempt to average the return over fat and lean periods is precisely the same in principle as admitting that a rate base must vary with important economic changes, if the rate of return does not change . . . The utilities cannot remain static and serve a highly dynamic world. Man-made formulas and legal rules cannot control fundamental economic forces and the striking effects of advances in the arts.

HE concedes that the delay and expense involved in attempts to find "reproduction cost increase called value by the courts" have discredited that method of determining the rate base and adds that even where reproduction cost is "found," it is, like prudent investment, sometimes quite useless as a rate base. Thus in the O'Fallon Case the Supreme Court approved on this basis a higher railroad rate valuation than either the ICC had been willing to allow or the railroads themselves could have used as a practical basis for fixing rates. In other words, "what was considered a great legal victory for the railroads was of little economic significance."

He thus finds it more essential to face economic realities with regard to utility investments and the return thereon than to attempt the rationalization of valuation theories as such. Even public ownership, he says, would not solve the prob-

lem, "unless equities as between ratepayers and taxpayers are to be ignored."

In the final analysis, what Professor Ruggles calls "facing economic realities" amounts to arriving at a "commercial value" for utility services which gives consideration not only to existing earnings but prospective trends of traffic and making the rate structure sufficiently flexible to derive the greatest benefit from such trends. In other words, merely because it costs so much to produce an article is no guaranty that consumers will be willing to pay that price for it, even though it may be made under the protection of a patent or distributed under the color of a so-called exclusive franchise. Hence, even if regulatory authorities were to endorse prudent investment as a rate base, it would be the public itself that would later demand a change during a period of high prices.

As to specific experiments in such realistic rate making, Professor Ruggles noted with approval the "objective rates" which were inaugurated by certain public utility companies to increase domestic consumption during the recent economic depression. The objective rate set-up is essentially the use of two rate levels at the same time—an immediate "base bill" to prevent any decrease in the utility's revenues and an obective rate to stimulate consumption by applying greatly reduced prices to increased usage over and above the base bill.

In principle, he regards this as an attempt "to break the vicious circle of high rates and low-volume consumption." Further, the very use of objective rates is an indication that both the utilities and the utility commissions are beginning to recognize that the domestic market over which an electric utility is supposed to have a monopoly can be adequately developed and properly maintained only through rates which offer inducements to domestic consumers to make liberal use of electricity for various services.

Passing on to the more complicated problem of competition *versus* monopoly in public utility regulation, Professor Ruggles seems inclined to agree with conclusions reached by B. N. Behling ("Competition and Monopoly in Public Utility Industries," 1938) to the effect that direct competition is likely to prove wasteful over the long run if it is allowed in the utility field. And further that even indirect competition (such as the contest between electric utilities and competitive fuel manufacturers for certain markets) should be subjected to intelligent regulatory supervision so as to prevent inequitable discrimination between classes of utility service. The Harvard teacher adds:

> The present writer is convinced that objective analyses of economic forces should determine the rates which should be applied to the various segments of a public utility's market. If this reasoning is sound, there should be regulation even of publicly owned and operated utilities. If publicly owned and operated utilities are not subject to control by competent public utility commissions, they will be controlled directly by the legislative and executive departments of government; or in other words by the political party which happens to be in power. Such control will neither give publicly owned and operated utilities an opportunity to succeed nor hold them responsible for reasonable results. It is doubtless a fair statement that the great mass of public utility consumers are much more interested in good service at the lowest possible rates consistent with such service than they are in the mode of ownership and operation. If such results are to be attained under either system, *objective* rather than *political* rate making is essential. This calls for administrative control by able public utility commissions rather than by political parties. Capable administrative control is imperative if rates are to be based upon an economic analysis of the market. Moreover, sound rate making is essential regardless of the mode of ownership and operation if complete utilization of plant is to be attained and lowest possible rates realized.

Professor Ruggles shows little enthusiasm for the so-called sliding-scale method of automatic profit sharing which seems to be working out fairly successfully under the well-known Washington plan. He feels that "the sliding-scale method assumes a simplicity in rate making and marketing of public utility service which does not exist and that its use may have an important bearing upon the

rate of return which a public utility may be able to realize."

He points to the danger under this plan of making rate reductions which are uniformly applied to all segments of a utility's market, but which result from net revenues obtained from industrial customers during prosperous periods. Rate making should be used to promote the expansion and development of certain segments of a market and also should be adjusted so as to hold certain parts of a market in check.

He concedes, however, that the sliding-scale theory may be of some value in saving time and expense in rate making, provided it is used in a discriminating manner by an intelligent commission which has the discretion of applying it to various segments of the utility's market.

In conclusion, Professor Ruggles makes a moving appeal for improving the equipment of both Federal and state commissions. They should be given higher compensation, more secure tenure, better staff assistance, and there should be less legal restrictions. The commissions should be encouraged to reward the efficiency of utility management instead of concentrating on the more politically attractive objective of reducing domestic electric rates.

He says that "as a matter of fact there will be many instances where the best interest of domestic consumers will be served if very low rates can be made to large industries which would otherwise generate their own power or use some substitute for it." He believes that there is hope for more intelligent coöperation between utility management and regulatory authorities to the end that litigation will be curtailed. He warns that even though legal scholars prove beyond the shadow of a doubt that utilities have a *legal right* to insist upon rates which will cover "all costs," including a so-called fair return on fair value, utility managers will be well advised not to chase after such a legal rainbow "for there surely is no pot of gold at the end of it."

—F. X. W.

The TVA Annual Report and Its Kickback

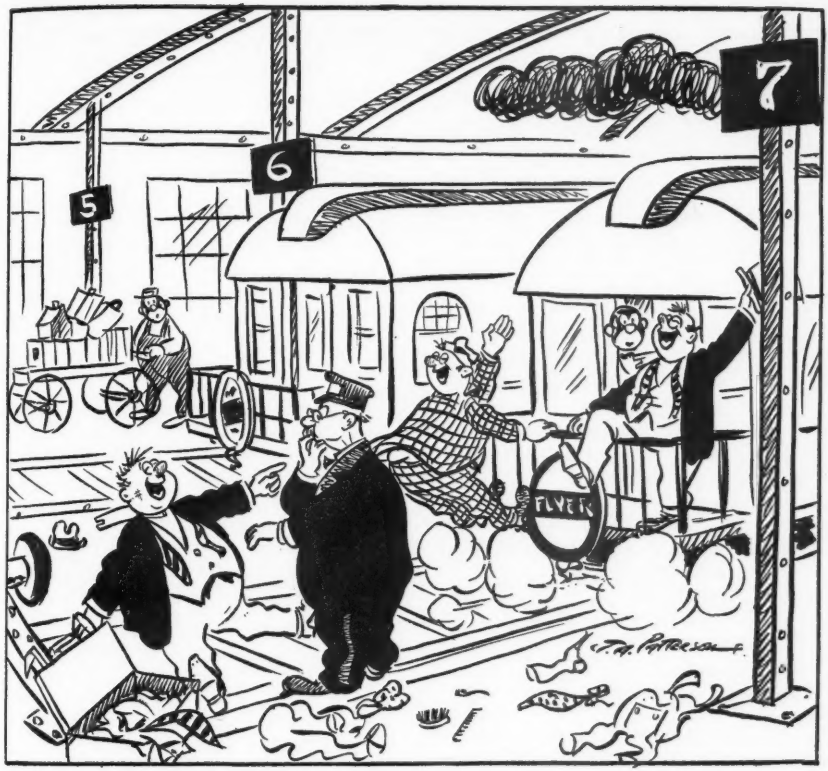
THE 1939 annual report of the Tennessee Valley Authority, presented to the Congress on the last day of that year, revealed that electric power operations in the twelve months ending June 30th, prior to the acquisition of the Tennessee Electric Power Company system, had produced a net income of $1,479,000.

This net income wiped out the net expenses of the power program during the previous five years of development and left a net income of $894,000 for the six years of the Authority's operations, the report said. Purchase of the Tennessee Electric Power Company system, after the close of the fiscal year, brought the number of consumers of TVA power to 340,000 and its revenue to $1,250,000 a month.

The Authority reported that it had completed the construction of Guntersville dam during the year, making five TVA dams in active operation. Chickamauga and Hiwassee dams are scheduled for completion in 1940, the latter almost a year ahead of schedule. Construction of Kentucky dam at Gilbertsville was well under way, and work was commenced on Watts Bar dam.

Guntersville dam extended the navigation channel on the Tennessee to 250 miles, and commercial tonnages moving on the river showed "a slow but steady increase," the Authority said.

Highly concentrated phosphatic fertilizer manufactured by TVA at Muscle Shoals, Ala., was being tested under agricultural auspices in 43 of the 48 states, the report revealed. The fertilizer was being tested and demonstrated under actual farming conditions in 20 states, on 25,700 farms comprising 4,200,000 acres. Included in this list are widely different soil and climatic conditions such as those of New York state, Texas, and Iowa.



"'SHA FUNNIEST THING . . . THOSE FELLERS THAT *CAUGHT* THA' TRAIN CAME TO THE DEPOT TO SHEE *ME* LEAVE!"

THE report said that the Authority's power program during the fiscal year "rounded into an established enterprise," with power revenues more than doubled over the previous fiscal year. The report showed that power operations had not only reached a paying basis but that the "net expense" for the first five years of development had been absorbed. The financial chapter of the report, embodying the report of the TVA comptroller, said that

> The power program earned a net income of $1,948,000 after depreciation of $1,503,000, but before deducting common expenses allocable thereto; and a net income of $1,478,000 after deducting common expenses which included additional depreciation of $232,000.
>
> This net income was sufficient to absorb the net expenses of $584,000 (net of interest earned) carried forward from the power operations of the five previous years, leaving a net income for the six years ended June 30, 1939, of $894,000.
>
> For the fiscal year 1939, the power program earned $399,000 in excess of all expenses incurred for the navigation, flood-control, and power programs . . . of which $2,245,000 was depreciation.

Total revenues of the power program for the fiscal year were $5,507,000, the Authority reported. Power sales exceeded 1,618,000,000 kilowatt hours. (It was noted that power operations of the Authority were greatly expanded after the close of the fiscal year. For the first five months of the current fiscal year, revenues from the sale of power ap-

proximated $5,622,000 for 1,405,000,000 kilowatt hours.)

The Authority reported that after the purchase of the properties of the Tennessee Electric Power Company on August 16, 1939, the number of consumers using TVA power was brought to 340,000. The number at the end of the fiscal year, June 30, 1939, was 128,000, compared to 42,000 at the end of the 1938 fiscal year. Power was sold at wholesale during the year to 40 municipalities and 22 coöperative associations, to 5 large industrial consumers, and to 6 privately owned utility companies, principally the Alabama Power Company and the Arkansas Power & Light Company.

WITH the Tennessee Electric Power Company purchase, the Authority had acquired a market for virtually all the power from its proposed system of 10 navigation, flood-control, and power dams and acquired generating plants, the TVA report revealed.

This transaction brought to a total of 22 the purchases of privately owned utility systems in which TVA bought transmission lines and generating stations, and municipalities and coöperatives purchased the distribution systems. As a result the transition of public ownership was brought about "with due regard for prudent investment in existing electric facilities," the Authority said. The total purchase price, including a small amount for gas and water properties bought by some municipalities, approximated $110,000,000, the TVA said. Among the larger acquisitions in addition to the Tennessee Electric Power Company were properties of the Memphis Power & Light Company, the Kentucky-Tennessee Light & Power Company, the West Tennessee Power & Light Company, and the Tennessee Public Service Company.

Far from creating a large surplus of electricity, as had been predicted when the TVA was created, the additional power made available by the Authority has been absorbed into the valley region; and it now appears that growing power demands "will require new generating capacity in addition to that which has been supplied by the Authority, plus that which is planned in the 10-dam system for control of the Tennessee river."

The demand for power in the Tennessee valley states, stimulated by low rates, has grown more than twice as rapidly as in the United States as a whole, the TVA report showed. The amount of power generated in these states during the fiscal year was 63 per cent above that generated in the peak year of 1929, compared to a 29 per cent increase for the nation over the same period. Use of coal in utility generating plants doubled in the area over 1929.

THE purchase of the TEPCO properties brought the installed capacity of the Authority to 719,000 kilowatts, including a 50,000-kilowatt leased plant at Memphis, Tenn., 225,000 kilowatts in plants acquired from TEPCO, and the installation of the first of three 24,000-kilowatt generators at Guntersville dam. At the end of the fiscal year, the Authority had 2,100 miles of transmission lines and the TEPCO purchase increased the total to 3,800 miles.

Residential consumers of TVA power used an average of 1,179 kilowatt hours each during the year and paid an average price of 2.14 cents per kilowatt hour. This compares with the national average of about 850 kilowatt hours and an average price of 4.21 cents, the report said. Several municipalities and coöperatives reported average annual use per customer of more than 1,700 kilowatt hours.

The reports of about 500 private electric appliance dealers showed total residential appliance sales to consumers of TVA power amounting to $3,688,000, the TVA report said. The total for the last two fiscal years was $5,300,000.

The report showed that TVA power was being distributed at the end of the year over 6,850 miles of rural lines, of which 5,770 miles represented new construction in territory previously without electric service. The expansion of rural service using TVA power "has had an apparent effect on the general trend in

the valley area," the Authority said. The number of electrified farms in Alabama, Tennessee, Mississippi, and Georgia has increased 185 per cent since 1932, compared to an increase of less than 100 per cent in the nation.

The Authority reported that the Alcorn County Electric Power Association, one of the first electric coöperative associations to distribute TVA power, had paid off all its long-term debt in less than five years and was able to reduce residential and commercial rate schedules below the TVA standard resale rates.

REPRESENTATIVE Andrew Jackson May, Democrat of Kentucky, vigorous critic of the Tennessee Valley Authority from the beginning, recently sent a 2,600-word telegram to *The* (Baltimore) *Sun* in which he accused the TVA of being "fundamentally dishonest in its attitude toward the public and toward Congress."

Mr. May in 1938 became chairman of the House Military Affairs Committee, which handles TVA legislation along with military matters. He represents a coal-producing section in the eastern part of Kentucky and, before he was elected to Congress in 1930, he was president of the Beaver Valley Coal Corporation. He sold out his interests in the company when he came to Washington.

In his telegram to *The Sun,* Mr. May directed his attack at the annual report of the TVA. "The text of this report leads me to suspect that TVA was recently caught in the act of attempting to sneak a trick play over Congress," Mr. May declared. He accused the TVA of omitting from a report to the House Appropriations Committee an estimate of depreciation to TVA equipment, and then providing the figure in the annual report. The telegram continued:

> How can the public trust a government agency which would attempt such a trick? The Tennessee Valley Authority is no more worthy of trust and good faith.

Mr. May accused the TVA of "window dressing," and of comparing its rates with the national average and "not with its near-by competitors, who paid 16 per cent in taxes and interest on their entire investment." He asserted:

> As a matter of common fairness to the tax-paying public, some explanation is due, in view of the impression created by the annual report that TVA at last is out of the red and beginning to pay its way. The report is a glowing success story designed to induce public and congressional approval of more extravagant expenditures at a time when economy should be the watchword of every Congressman.

Mr. May specifically charged that the TVA, with an investment of $67,275,000 in power at four dams, has paid only $243,000 in taxes to the states in which it is doing business. He commented:

> This is less than three-tenths of one per cent of the total investment for power. In the state of Tennessee alone the private companies displaced and destroyed by TVA had paid $4,800,000 annually in taxes. Citizens in Tennessee are shocked and alarmed at the prospect of replacing from their own pockets the taxes formerly paid by private companies.

NEXT Mr. May charged that the TVA pays no interest on the funds it used, obtained through congressional appropriations, and that it received War Department properties which cost $252,700,000.

He declared that by failing to pay interest and by destroying a tax revenue yielding $1,200,000 annually to the Federal Treasury, "the TVA is short $3,600,000 annually in what it owes the Federal Treasury."

Then Mr. May charged that TVA showed on its books a low capital investment by "write offs" of 60 per cent of its costs to "multiple purpose facilities"—flood control and navigation. These "write offs" are "proved to be its basic fraud," he added. Mr. May asked in the telegram:

> What private company could not charge TVA rates with a 60 per cent charge-off of most of its capital base? The necessity of this write off is apparent. Without it TVA rates would be higher than private rates in the adjoining area. Even with a write off more nearly approaching realism, say 10 or 20 per cent, TVA's rate structure would be higher than surrounding private companies which also pay taxes and interest.

In concluding, Mr. May charged that the TVA officials, engineers, and attorneys had "inspired and sponsored" public ownership legislation in Kentucky, "which not only proposes to repeal outright the laws of that state enacted for the creation of a public service commission, but to reënact the statutes of the state of Kentucky so that municipalities . . . may buy . . . own, and operate public service facilities, particularly power companies." Mr. May asked:

> Why do I suspect the TVA of this move? Because it did the same thing with the states of Tennessee, Alabama, and Mississippi when it went to the legislatures of those states with a powerful lobby and the ever-tempting bribe of cheap yardstick false power rates and induced those three great southern states to exempt this Federal agency from regulation or control in any manner whatsoever by these states.

In January, 1938, a few days after Mr. May became chairman of the House Military Affairs Committee, in an attack on the TVA, he declared that most of the coal produced in his region of Kentucky goes to the Great Lakes for Canadian and New England plants, but that "a large percentage goes to power plants owned by private utilities companies." He has argued that in numerous instances it is cheaper to produce and distribute electricity by steam power than by hydroelectric developments.

Notes on Recent Publications

THE "DETROIT PLAN." By C. Emery Troxel. *The Journal of Land & Public Utility Economics.* November, 1939.

This is a critical appraisal of the profit-sharing plan adopted by the Detroit common council in December, 1935, for the control and disposition of "excess" earnings of what was the Detroit City Gas Company (now Michigan Consolidated Gas Company). The plan is somewhat similar to the well-known "Washington plan," under which gas and electric rates in the capital city are adjusted on a sliding-scale, profit-sharing arrangement, based upon an agreed valuation.

Professor Troxel finds, however, that the Detroit plan lacks important regulatory features of the Washington plan, such as the retention of supervision of rate structures and service standards by the city instead of the company, a definite depreciation policy, and provision for automatically plowing back the customer's share of excess earnings into rate reductions rather than the distribution of "refunds."

In any event, this author seems to be somewhat disappointed with the Detroit experiment which has, since March, 1939, been operating under the shadow of a Michigan Supreme Court decision which gives the Michigan commission authority to veto the plan—a development which Professor Troxel looks for in the near future.

THE MODERN RAILWAY. By Julius H. Parmelee. Longmans, Green & Company, Inc. New York, N. Y. Price $4. 730 pages. January 4, 1940.

The author of this book has been director of the Bureau of Railway Economics of the Association of American Railroads since 1920. The purpose of the book is to explain the modern phenomenon of railway transportation in the United States. The approach is factual and reportorial, although the tone of the book necessarily reflects the viewpoint of management. The style is simple and readable, in view of the unavoidable complexity of the subject matter.

Despite the fact that the book runs a bit long for a popular volume on industrial analysis, Mr. Parmelee has made good use of every page and has succeeded in covering practically all aspects of a business which is rich in history and vast and varied in its operating ramifications. The work is exceedingly well documented with liberal footnotes, charts, and a helpful appendage containing a summary of Federal railway and labor legislation. It will be found valuable not only for straight reading by one who wants to obtain a comprehensive background of the American railroad picture within a short time, but also as an up-to-date handy reference manual for those who have occasional need to read up on some particular aspect of the industry's position. Incidentally, this is one of the economic series by the same publishers, edited by Professor Ernest L. Bogart, who is connected with the University of Illinois.

UTILITY ARITHMETIC AND THE UTILITY ACCOUNTANT. Abstract of an address by F. L. Griffith before the Third National Accounting Conference, Edison Electric Institute. Chicago, Illinois. November 15, 1939. *American Gas Association Monthly.* December, 1939.

The March of Events

TVA Plan Sent Congress

PRESIDENT Roosevelt on January 15th forwarded to Congress a request of the Tennessee Valley Authority for additional power to develop into a vast recreational area parts of the six southern states embraced in the TVA project. It was the first time that the agency had dwelt at length on the recreational aspects of the undertaking.

Mr. Roosevelt began a message of transmittal, accompanying the report with the observation that many citizens and even government officials believed the purpose of the law creating the TVA was primarily the development of electric power. He added:

"It is perhaps time to call attention to this utter fallacy."

Actually, according to the President, the development of electric power was only a relatively small part of a great social and economic experiment in one of the major watersheds of the continent. It was time that the public understood this as well as the manifold objectives underlying the TVA plan, said the President.

Among the purposes, Mr. Roosevelt mentioned the prevention of loss of life and property incident to floods which had taken an annual toll of $20,000,000 in property damage. The construction of dams on the Tennessee river and its tributaries for this purpose also had made possible the production of a large amount of power and afforded barge navigation for hundreds of miles up the river, it was recalled. President Roosevelt stated:

"Furthermore, the original objective of the law included many other things, such as the planting of water-retaining forests near the headwaters of the many rivers and streams, the terracing of farm hillsides, the building of small check-dams, the development of fertilizers, the diversification of crops and other soil-building methods, the improvement of the highways and other forms of transportation, the bringing in of small industries, the extension of rural electric lines, and many other similar activities."

Without recommending any action on the TVA proposal, Mr. Roosevelt closed his message with the expression of a hope that the report would "dispel any erroneous impression that the Tennessee Valley Authority's work is concerned principally with the mere development of electric power."

In a letter to President Roosevelt accompanying the report, Harcourt Morgan, chairman of the TVA, pointed out that the agency now was limited by statute to such recreational projects as were incident to studies and surveys authorized in the law and which therefore were of a "demonstration" or experimental nature.

As for the possibilities of the Tennessee valley for recreational purposes, the report said that when the agency's program was completed there would be available for a vast national playground more than 500,000 acres of water surface and nearly 6,000 miles of publicly owned shores surrounding its man-made lakes in six states.

President's Budget Message

PRESIDENT Roosevelt last month recommended to Congress the appropriation of $40,000,000 to finance the Tennessee Valley Authority for the next fiscal year. Largest item in the estimate was $15,423,000 to continue construction of Kentucky dam and reservoir at Gilbertsville, Ky., on which an estimated $11,722,000 will be spent during the current fiscal year ending next June 30th.

Another $14,888,000 was proposed to continue construction of Watts Bar dam, and $1,000,000 to build an access road, a construction plant, and employee housing facilities for Coulter Shoals dam and reservoir, the last of the 10 dams contemplated in the TVA program.

Other proposed expenditures for the dams were:

Pickwick Landing, $774,000; Wilson, $138,000; Wheeler, $2,068,000; Guntersville, $80,000; Hales Bar, $681,000; Chickamauga, $1,213,000; Hiwassee, $752,000; and Norris, $752,000.

The President said the appropriation request for the 1941 fiscal year, combined with $3,300,000 expected to be spent from bond issue proceeds, "will finance the net estimated obligations of $43,300,000."

President Roosevelt recommended a $3,200,000 slash in the request for funds to continue construction of transmission facilities at Bonneville dam, and an even greater reduction in the request for completion of generating facilities at the dam. He recommended a $6,000,000 appropriation for the power distribution system for the fiscal year, July 1, 1940, to June 30, 1941. Administrator

Paul J. Raver had requested $9,200,000. The appropriation for this year was $13,000,000. The President recommended only $800,000 for power plant construction. The Army Engineer budget request was believed to be in the neighborhood of $7,000,000.

Administrator Raver and Army Engineers joined, however, in declaring that if Congress approves the President's budget figures there will be no crippling of major development of the project.

FPC Amends Regulations

THE Federal Power Commission recently amended its regulations under the Natural Gas Act to call for more detailed information on proposed changes in natural gas rates that are filed with the commission. Under the amended regulations, natural gas companies will be required to submit a statement of the reasons for proposed rate changes, a justification of any proposed increases in rates, comparative estimates of sales and revenues under existing and proposed rates, and a statement of the original cost of the facilities used in rendering the service.

Ickes Associate Named

PRESIDENT Roosevelt early last month appointed Alvin J. Wirtz of Austin, Tex., as Undersecretary of the Department of the Interior. Mr. Wirtz has been general counsel of the Lower Colorado River Authority, familiarly known as the Texas "Little TVA," and is considered an expert on water-power matters. He succeeds Harry J. Slattery, who recently was named Rural Electrification Administrator.

Secretary Ickes said he was "delighted" that the President had appointed Mr. Wirtz.

Mr. Wirtz was born in Columbus, Tex., and attended the public schools and the University of Texas, from which he received a law degree in 1910. He practiced law in several parts of Texas, entering an Austin firm in 1934.

St. Lawrence Plan Revived

THE long dormant project for a deeper St. Lawrence waterway, with collateral hydroelectric power development, was revived recently under circumstances pointing to the relatively early conclusion of a treaty which will make the improvement possible.

After informal discussions for several weeks between the Washington and Ottawa governments, the State Department said that preliminary details would be considered in discussions with Canadian officials by a United States group headed by Adolf A. Berle, Jr., Assistant Secretary of State.

Associated with Mr. Berle will be Leland Olds, chairman of the Federal Power Commission, and John D. Nickerson, assistant chief of the European division of the State Department. It was expected that after the delegation's return from Ottawa negotiations for a treaty then would be conducted in Washington with Loring Christie, the Canadian Minister, who has long been active in the consideration of the project. Success would mean the achievement of one of President Roosevelt's chief power projects.

Mr. Berle has been active in the matter since he became Assistant Secretary of State. He was active in drafting the treaty submitted to Canada by this government May 28, 1938.

A resolution proposing an investigation of the Great Lakes-St. Lawrence waterway project, to determine its probable cost and its economic results, was introduced in the House on January 17th by Representative Martin J. Kennedy of New York. The House Interstate and Foreign Commerce Committee would be authorized to make the inquiry. Mr. Kennedy made public a letter to Secretary Hull asking that he suspend all negotiations in connection with the treaty until the committee had made its report.

Representatives of 21 organizations interested in the proposed waterway asserted recently that any benefits which might result from such a project "are far outweighed by their detrimental effects."

Alabama

Sale Agreement Reached

THE Alabama Power Company and the city of Decatur reached an agreement last month under which the utility will sell its electric light and power distribution system to the city for $193,000. The sale would be consummated, it was said, as soon as a contract could be drawn and signed, and approval of the state public service commission obtained.

Both the Alabama Power Company and the city have been retailing electric power in Decatur since the city's new distribution system was completed March 1, 1939. The sale price was reached after the utility's distribution system was found to have a salvage value of more than $100,000 in an investigation by an independent firm.

Decatur is one of eight Tennessee valley municipalities in which the Alabama Power Company, a subsidiary of Commonwealth & Southern, has been operating in competition with municipal systems.

The state public service commission on January 10th took under advisement the Ala-

bama Power Company's petition for authority to sell its Scottsboro electric distribution system to the city for $50,000.

Scottsboro, through a Public Works Administration loan and grant, has constructed its own municipal system and is marketing TVA power in competition with the power company.

Power Authority Dissolved

THE state public service commission on January 2nd ordered dissolution of the South Alabama Power Authority. Hugh White, commission chairman, said:

"Under the evidence, the commission finds that continuance of the authority is not in the public interest or in the interest of economic and efficient service and is not necessary."

The authority, recently formed, proposed to buy south Alabama electric properties of the Alabama Water Service Company by issuing $2,000,000 in bonds. Delegations from Troy, Evergreen, Luverne, Dozier, Samson, Banks, Brundidge, and several other south Alabama towns objected to the sale of the properties.

The authority, which the commission originally sanctioned November 17th, was established by the city of Andalusia, acting under a 1935 state "New Deal" act, which empowers municipalities to organize power districts. Governor Dixon, acting under mandates of the power district act, named Mayor J. G. Scherf, of Andalusia, C. Dowling, Andalusia, and Mayor Hatch Jackson, Brundidge, as authority directors.

The group seeking dissolution of the authority appeared at a state commission hearing December 11th and 12th and contended it was a "purely political" agency. Officials of two cities owning their own distribution systems predicted then they would seek other wholesale sources of energy if the authority succeeded in its proposal to acquire the water company electric facilities.

Mayor Scherf insisted the authority was without political significance and predicted revenues would be sufficient to retire bonds issued to acquire the system.

Arkansas

Adopts New Gas Policy

ARKANSAS natural gas should be used to supply Arkansas consumers where economically feasible, the state utilities commission recommended in announcing adoption of a new policy last month. Chairman Thomas Fitzhugh said commission members probably would inspect gas production in the Magnolia oil field near the Louisiana border within thirty days.

Commenting on a statement by the El Dorado *News-Times* that the state's controlled oil fields, all in south Arkansas, were producing approximately 50,000,000 cubic feet of gas daily "with a large amount of it going up in flares, although it is not classed as waste by the Arkansas Oil and Gas Commission," Mr. Fitzhugh said:

"We are definitely in favor of the distributing companies serving Arkansas consumers with Arkansas gas if the price is comparable to that paid for fuel now being piped in from Louisiana, Texas, and Oklahoma."

He said this position had been made plain in conference with officials of the Arkansas Louisiana Gas Company, major distributor in Arkansas, and the Louisiana-Nevada Transit Company, recently given a permit to distribute gas in southwest Arkansas.

Most gas now sold in Arkansas is piped from the north Louisiana and east Texas fields. Some western Arkansas cities receive gas from Oklahoma and the Clarksville field.

California

Hetchy Review Sought

THE government has completely reversed its interpretation of § 6 of the Raker Act in an attempt to obtain a review by the United States Supreme Court of the Hetch Hetchy power case, the city of San Francisco contended in a brief filed with the nation's highest court last month.

The brief was prepared by Garret W. McEnerney, special counsel for the city. It was in reply to a petition by the attorney general asking that the Supreme Court review the decision against the government handed down by the ninth circuit court of appeals.

Federal District Judge Roche had held the city's 1925 contract with the Pacific Gas and Electric for distribution of Hetch Hetchy electric energy was not an agency contract, but a sale for resale in violation of the Raker Act. The appellate court reversed that decision, holding the contract was one of agency and therefore legal under the Raker Act..

The city's latest brief reasserted that § 6 prohibits sale of the Moccasin Creek power to a private corporation for resale. It stated

the government throughout the district and circuit court proceedings agreed with that interpretation, but that now, to obtain a Supreme Court review, it contends the prohibition is against a "grant" by the city of a "right to sell."

During the circuit court proceedings the government raised a contention not theretofore made, that the city may not under the act dispose of the power through an agency agreement. Before that it simply had maintained the PG&E contract is not one of agency.

McEnerney's brief asserted, however, that the government's petition to the Supreme Court was not based upon the contention that an agency agreement would be illegal, but upon a new point "categorically in opposition to one maintained without interruption in both courts below."

Power Proposal Opposed

VIGOROUS opposition was expressed early last month to a proposal to use $50,000,000 of the $170,000,000 provided in the Central Valley Water Project Act of 1933 for power development.

The opposition to "unfreezing" $50,000,000 of the revenue bonds, which are authorized to be sold in the development of the project, came from the Contra Costa county water district. It was in response to a request from the Central Valley Project Association to the water district for an expression on the proposal to reintroduce Central Valley power legislation at the January 29th special session.

Thomas M. Carlson, attorney for the water district, in a lengthy review of the Central Valley Project Act, declared that the Act approved by the people at a special election in 1933 "is for water, not for power," and that "power was incidental to help pay for the water."

Secretary O. N. Christianson of the water district advised Roland Curran, secretary-manager of the Central Valley Project Association, the water district did not feel "legislation enacted for the benefit of a publicly owned water program should now be used as a vehicle to further the ambitions of those who are interested in a public ownership of power program."

A warning was given that the Central Valley project "is still less than half finished" and that already the Federal government plans a drastic cut in the Reclamation Bureau's appropriation for the Central Valley development.

Power Survey Opened

A SURVEY to establish equitable charges by the Los Angeles Water and Power Department to other departments of the city government, in lieu of revenue lost by the department's displacement of privately owned utilities, is being made by the Board of Public Utilities and Transportation and the Bureau of Budget and Efficiency, it was revealed last month.

The utilities board recently referred to its general manager instructions from the mayor that it coöperate with the Bureau of Budget and Efficiency in such an investigation and that recommendations be submitted to him.

Consideration was urged by the mayor of the advisability of terminating the arrangement for a flat charge and the installation of meters, permitting an arrangement whereby electrical energy would be purchased at wholesale rates for all street lighting, and maintenance of street lights would be taken over by the street lighting department.

Kentucky

City May Acquire Utility

ACQUISITION of utility facilities of the Louisville Gas & Electric Company by the city of Louisville was under study, Mayor Joseph D. Scholtz admitted recently. While vague as to details, he disclosed he had consulted with Dr. John Bauer, utility rate specialist, who has drawn a rough plan for the proposal, and that the state general assembly will be asked to pass legislation to enable the city to purchase the properties, estimated to have a value of $60,000,000. The FPC has completed examination of the properties.

Louisville Gas & Electric is a subsidiary of Standard Gas and Electric.

Nebraska

Power Proposal Rejected

THE Hastings city council refused to accept the recommendation of a citizens' committee last month that any further expansion of the municipal plant be delayed one year, and that the city test out feasibility of relying on hydro power for future current needs. The committee was named by the chamber of commerce in December after the city and the Tri-County project failed to agree on a contract for use of hydro power. The city then moved to buy a new 3,500-kilowatt generator unit.

Superintendent Ray Coffey of the municipal water and light plant recently reported that Hastings' residential power rates were the fourth lowest in the nation for cities with populations between 15,000 and 25,000.

Allows Case to Be Filed

THE state supreme court last month granted the application of the Consumers Public Power District of Columbus to be allowed to file a case testing the validity of a contract it has entered into with the city of Columbus, which provides a formula for later purchase by the municipality of the distribution system inside its borders that the district is buying from Northwestern Public Service Company.

The petition asked an order on the secretary of the district to sign the contract. The question at issue, as stated to the court, is one raised by those bond men who are to handle the bond issue that will be executed to pay for all properties in that division of the private company. It is whether a city, which under the law can condemn distribution systems within their borders, can contract away this right by agreeing to a price determined by the debt and revenues of the district.

The bond men have intervened as friends of the court, and it was possible intervention would be asked by others.

District Tax Exempt

THE Lancaster County Rural Public Power District is exempt from taxation, District Judge Broady held in a memorandum opinion and a decree filed in district court on January 4th, in the suit brought by the district to have an assessment made by Assessor Scott and the Lancaster county taxing authorities declared void. Assessor Scott said he wanted the case appealed to the state supreme court and County Attorney Towle said he expected to appeal it.

The opinion of Judge Broady held that the power district is a government subdivision and that its taxation is void. County authorities are enjoined from placing the assessment on the tax rolls and from attempting in any other way to tax it. The suit was filed for the district by Attorney C. A. Sorensen after Assessor Scott attempted to collect taxes on a $210,255 valuation placed upon the tax books.

Power Merger Proposed

A PROPOSAL for "bringing peace" to Nebraska's public power districts by consolidating the three major districts into one big organization, was made public last month by Harold Kramer, general manager for the Loup river project. Kramer discussed various integration schemes in a report to his directors, then added:

"Another method of bringing peace to the power situation in Nebraska would be by abandonment of the three present districts and consolidation into one district to be known as, let us say, the Nebraska Public Power and Irrigation District."

Kramer said legal opinion had agreed that the proposal could be effected under Nebraska law. He told Loup directors that if they would "abandon all selfishness and look on the problem from a broad, Nebraska angle in which we are trying to develop not only the power resources but irrigation as well, then I think that you will give the proposal serious consideration."

Kramer pointed out adoption of such a solution might cost him his own job, should a chief engineer and general manager take over combined operation of the projects. Should all three districts agree on this amalgamation plan, he said, "then it becomes the problem of the district and PWA officials to sit down and estimate the investment, revenues, and whatever refinancing is necessary on the basis of a reduction in the interest rate."

Kramer asked that if the plan is adopted, Columbus be designated as combined headquarters, because "the greatest majority of the load of all three systems will be within a radius of 100 miles of Columbus." Division headquarters would remain at North Platte and Hastings.

Representatives of the Platte Valley Public Power and Irrigation District said the district's board of directors was emphatically opposed to any consolidation of the three major districts.

New Jersey

Utility Tax Laws

THE 1940 New Jersey legislature, its opening hours marked in the assembly by a flare-up of the Republican factionalism that has afflicted the party for years, was reported recently face to face with scores of controversial bills.

The Republican-controlled 164th session, however, jumped a big hurdle when it passed four measures rectifying the state's system of distributing approximately $13,000,000 a year in gross receipts and franchise taxes levied on public utility companies.

Seventy bills, hanging from pet home-town projects of the individual legislators to a measure wiping out the one per cent tax on employees' salaries for unemployment compensation, were dropped in the assembly and senate hoppers.

New York

Submetering Curb Asked

APARTMENT houses and office buildings which submeter electricity and gas to tenants would be placed under state public service commission jurisdiction in a bill proposed on January 15th by Senator Phelps Phelps, Manhattan Democrat.

Senator Phelps said the only regulation now affects the rates paid by the apartment or business. The measure would require state approval of rates charged individual tenants.

North Carolina

Power Rate Slashed

CUSTOMERS of the Virginia Electric & Power Company in 14 northeastern North Carolina counties will save more than $36,000 yearly by rate reductions approved by Utilities Commissioner Stanley Winborne. The rates are the same as those charged by the company in Virginia, Commissioner Winborne said.

Under the new rates the first 50 kilowatt hours of current used in residences will cost 5 cents a kilowatt hour, while the old rate was 5½ cents a kilowatt hour for the first 60. The commercial rate was cut from 5½ to 5 cents for the first 250 kilowatt hours. A new rate of 1 cent a kilowatt hour will apply to power used for water heating.

Winborne estimated that residential users would save $19,600 yearly, commercial customers $13,092, and customers heating water electrically, $4,000.

Ohio

Cleveland Rate Case

THE Cleveland Electric Illuminating Company last month prepared for its rate fight with the city. The company has retained two of the largest engineering companies in the nation for the special services it believes are required to combat the city's demand for a rate decrease of $1,385,000 a year. The J. G. White Engineering Company of New York will act in a consulting capacity. This company some time ago asserted, after a preliminary investigation, that an electric rate cut was not warranted.

The most costly phase of the impending rate controversy—the inventory and appraisal of the CEI system that stretches from Avon to Ashtabula—will be handled by the Stone & Webster Engineering Company of Boston and New York.

The company last month served notice on city officials that it was filing a motion with the state public utilities commission asking that it be given several additional months to make its appraisal and inventory. It also said it would ask the commission to stipulate a definite date as of which the estimate of the value of the CEI system should be computed.

Assistant Law Director Spencer W. Reeder, in charge of rate litigation, said the city would oppose the latter request on the ground that the city ordinance calling for the $1,385,000 rate cut was fair and reasonable and that the company did not need to make a complete inventory.

Rate Agreement Reached

THE Toledo Edison Company last month reached an agreement with Toledo city council on a new 5-year electric rate whereby the company would reduce present rates 13.8 per cent.

It was announced that the new contract would save consumers approximately $608,000 annually. A citizens' advisory committee had recommended that a reduction of $1,250,000 annually be demanded.

Electric Rate Lowered

REDUCED electric rates for the city of Washington Court House were approved by the state utilities commission recently. The Dayton Power & Light Company was authorized to make the following rate changes at Washington Court House:

Residential—First 15 kilowatt hours a month (minimum) 75 cents (unchanged); next 25 kilowatt hours cut from 5 to 4.75 cents; next 50, 4 to 3.75; other rates unchanged.

Commerical: First 100, 5 to 4.75 cents; next 100, 4.5 to 4.25; next 200, 4 to 3.75; next 200, 5 to 3.25; next 200, 2.5 to 2.75; excess, 2.5 to 2.25.

Oklahoma

GRDA Granted Extension

DEADLINE for completion of the $20,000,000 Grand river power project last month was set for March 30th instead of January 1st. The Public Works Administration on January 2nd granted the dam authority a 3-month extension, half the time asked.

The PWA also declared itself "prepared to relax its ordinary procedure and name a general manager" of the project, in view of GRDA's failure to fill the $15,000-a-year post, vacant since December 1st. Continuance of R. L. Davidson, GRDA chief counsel, as acting manager to January 9th was approved by the PWA.

Previously the Authority had pressed for added time and funds and PWA had deferred action on both pending selection of a manager. PWA twice rejected GRDA nominations of Ray McNaughton, who is Authority chairman, for the managership.

Oregon

Rate Cut Due

ALREADY boasting light and power rates among the lowest in the entire United States, the city of Eugene last month learned that charges would be still further drastically reduced on March 1st.

Homes and stores will have an average reduction of 15 per cent and industrial plants will find their rates 6 per cent lower, it was announced by J. W. McArthur, superintendent of the Eugene water board, which is administrator for the local utility. Comparisons of rates in other cities were not available in all classes, but it was believed that Eugene rates may take honors as the lowest in the nation as a result of the reduction.

The slash will save power users about $65,000 annually on the basis of present power and light consumption. A similar reduction, which reduced total electric payments by $70,000 in 1939, was announced just a year ago, McArthur said.

Power Contract Signed

MONMOUTH signed a 20-year contract for 400 kilowatts of Bonneville power on January 5th. It was the twelfth contract executed by the Bonneville Administration since generation started eighteen months ago and brought contractual demand for firm power to 57,810 kilowatts. Present capacity is 86,400 kilowatts.

The newest contract was signed by Bonneville Power Administrator Paul J. Raver, and Mayor F. R. Bowersox and Recorder Elsie O'Rourke of Monmouth.

The city was said to be negotiating with Mountain States Power Company for purchase of the company's facilities within and adjacent to Monmouth, under authorization of a bond issue voted last year. Bonneville is prepared to deliver power when the distribution system is acquired.

The contract does not set up retail rate schedules, but stipulates that the city and the Bonneville Administrator must agree on rate reductions before delivery of power.

Rate Cuts Sought

THREE officers of the Bonneville Service Committee, a recently organized group of business men that has declared for a Portland people's utility district, last month filed formal complaint with the public utilities commissioner, asking him to order Portland electric utilities to reduce commercial lighting and power rates by 50 per cent immediately. The complaint was signed by C. A. Lucas, Flavel W. Temple, and William F. Woodward.

It alleged that Portland General Electric Company and Northwest Electric Company have sufficient information in their files concerning commercial customers to permit immediate rate reductions. The complaint held that a field survey was unnecessary, "and both of said power companies have delayed even sending crews into the field to make such surveys in order that they may announce such reduced commercial schedules immediately prior to the Portland Public Utility District election which will be held on May 17th."

The complaint attacked reduced residential schedules filed by the companies and tentatively approved by Commissioner Ormond R. Bean, and alleged that commercial lighting rates "are unreasonable and unjustly discriminatory, and among the highest in the entire state of Oregon, being higher than the rates charged in Corvallis, Albany, or in Seattle, Tacoma, Eugene, Los Angeles, San Francisco, or other cities."

PUD Buys Power Firm

SKAMANIA County Public Utility District last month purchased the West Coast Power Company's distribution system for $40,000 and would begin using Bonneville power shortly, Paul J. Raver, Bonneville Administrator, said. Because the county is with-

in 15 miles of the dam, the PUD can buy electricity for $15.75 a kilowatt year, including cost of transmission. Raver said this would give the district the lowest wholesale rate in America. The power will be delivered over the government transmission line which extends to Cascade Locks.

The West Coast Company had 35 miles of line which served 474 customers last year. The district was organized in 1938. All of its expenditures will be financed out of a 4½ per cent bond issue, which was sold at par and which will be repaid solely from electrical earnings, it was reported. Purchase of the private company's properties was through negotiation, rather than condemnation.

Pennsylvania

Gas Sales Criticized

INFERRED criticism of the Peoples Natural Gas Company for selling gas at wholesale to New York utilities at 18 cents per thousand cubic feet while buying additional gas from an affiliated supply firm at 35 cents was voiced recently at a state public utility commission hearing into Peoples' demand for increased rates.

J. French Robinson, Peoples' president, identified exhibits showing reserve supplies of Peoples and the Hope Natural Gas Company, its supplier, together with figures showing that Peoples buys about 20 per cent of its gas from Hope while selling some northern Pennsylvania gas to New York. Mr. Robinson argued that Peoples must maintain contracts with companies having a sufficient reserve supply of gas to insure that heavy winter peak demands always can be met.

Action must be taken by the state commission before February 1st or the new Peoples' rates will automatically become effective, raising some domestic consumers' bills as much as 42 per cent.

Charge Rates Unreasonable

THE Pennsylvania Public Ownership League petitioned the state public utility commission recently to investigate what it contended were "unjust, unreasonable, and discriminatory" rates charged by the Metropolitan Edison Company, of Reading.

In its petition the league, headed by John J. Lipko, Harrisburg, complained the utility's property valuation was "grossly inflated" and that rates brought in excess of "reasonable returns." Lipko said a similar complaint would be filed against the Sunbury Water Company.

Another Lipko organization, the Pennsylvania Utility Consumers' Service, Inc., is at loggerheads with the state commission over question of its jurisdiction over the service.

South Carolina

House Rejects Resolution

THE state house last month refused to consider immediately a concurrent resolution proposing the creation of a joint legislative committee to investigate and study "the status of rural electrification in South Carolina."

Representative Padgett, of Colleton, introduced the measure but members' objections sent it to the agriculture committee. Three house members and three senators would report within sixty days after appointment, it was said.

"The committee may in its discretion confer with officials of the Federal Rural Electrification Administration to the end that full information concerning the development of rural electrification may be secured and made available to the general assembly," the proposal set forth.

Tennessee

Governor Delays Action

A RESOLUTION adopted by the Tennessee County Judges Association requesting Governor Cooper to call immediately a special session of the state legislature to deal with power tax replacement problems brought a prompt refusal from the executive recently. The governor declared:

"To call the legislature now for the purpose of tax replacement before Congress has had an opportunity to act upon the pending Norris Bill for power tax replacement, to my judgment, would be premature. I am opposed to calling extra sessions of the legislature at all, except in case of dire necessity, which so far hasn't developed."

The governor said the legislature could

deal with the problem as well next fall or next year as at the present time and without inflicting harm on any county. Cooper voiced his views concerning the special legislative session within half an hour after the passage of the resolution, which was placed before the county officials by Judge August Wilde of Madison county and seconded by Walter Stokes, former state finance and taxation commissioner.

TVA representatives urged the county judges to support the Norris amendment vigorously, suggesting that foes of TVA would view dissension in Tennessee as ammunition with which to attempt to harass the entire program.

Plans Franchise Fight

Al Kraemer, Knoxville bus system head, purchaser of TEPCO's street car franchise in Nashville, prepared recently to take up Mayor Thomas L. Cummings' challenge that the franchise "no longer exists" and will attempt to show that any failure to comply with city charter regulations in the original transfer of the franchise from the defunct Nashville Railway & Light Company to TEPCO was negligence on the part of the city and not the power company.

Mayor Cummings told the city council early last month, after A. T. Drinnon, general counsel for Kraemer's Tennessee Coach Company, had announced his client's intention of filing a petition with the council for approval of the franchise transfer from TEPCO to his company, that he would "use every honorable means to fight any attempt to transfer TEPCO's street car franchise" to any new company. The mayor insisted that the franchise was invalid and that the power company was only allowed to operate on "sufferance."

The number of franchise ordinances submitted and passed on first reading at the meeting of the city council on January 2nd was increased to three by the introduction of a new ordinance drafted by Jordan Stokes, Jr., and Jordan Stokes III for Jack Clay and his associates. Stokes has filed a bill of complaint in chancery court insisting that the TEPCO franchise is invalid. The suit, if successful, is designed to pave the way for acceptance of Clay's bid for a bus franchise.

Mr. Kraemer on January 13th released his proposed bus franchise ordinance and at the same time announced the capitalization of his company would be increased to $1,000,000. Kraemer's 5-cent-fare ordinance was drafted in the name of the Nashville Transit Lines, which was recently granted a charter of incorporation by the Secretary of State.

Power Profit Claimed

The Chattanooga Electric Power Board last month claimed a profit of $99,406 and consumer savings of $553,731 for four and a half months of distributing TVA power.

Covering the period prior to January 1st when it operated distribution properties formerly owned by the Tennessee Electric Power Company, the board's report showed an income of $1,244,746 or $467,677 above operating expenses. The surplus of $99,406 remained after deductions for the bonded debt, taxes, and depreciation.

The board paid its share of county and city taxes, $138,800 and $130,754, respectively, last year and said it would continue payment of the city levy. Pending state legislation for authority to make the county payment, the board said it would set the amount aside.

Chattanooga joined with other cities and the TVA last August 16th in purchase of the generating and distribution facilities of the Tennessee Electric Power Company.

NES Head Elected

J. E. Carnes last month was elected general manager of the Nashville Electric Service by the unanimous vote of the Nashville Power Board in regular session. Carnes, connected with Nashville electric utilities for thirty-six years, had been acting general manager of NES since the death of J. P. W. Brown on December 28th, and was formerly assistant to Mr. Brown when the latter was general manager of the Tennessee Electric Power Company.

The board voted to abolish Carnes' former position which paid a salary of $6,500 a year and adding that to the difference between Carnes' new salary of $8,500 a year and the salary of the former general manager, the board explained that it will net a saving of approximately $10,000 annually.

An amendment offered by Leon Gilbert gave Carnes the same powers held by the late J. P. W. Brown as general manager of the organization.

The city, TVA, and NES are in agreement in regard to purchase of electricity from NES for municipal uses, City Attorney W. C. Cherry said recently. It was indicated that the fate of the city steam plant, now generating power for schools and other city-owned public buildings, will probably be decided by a referendum. It was planned tentatively that either NES or TVA would take over the steam plant for a stipulated price of $100,000.

Of this amount $45,000 would be paid to bondholders to cover the outstanding bonded indebtedness against the plant. The remainder would be taken up in payment of contractual obligations either between the city and NES, or the city and TVA.

Under terms of the TVA contract with the power board the board is prohibited from generating electricity. This was said to indicate that it would be up to TVA to purchase the Nashville steam plant if either of the two agencies is to assume control of it.

Utah

Board Reports Progress

THE major endeavor of the Utah Public Service Commission at the present time "is the laying of a sound basis for the determination of values of utilities," it was stated in the annual report of the commission, submitted on January 10th to Governor Henry H. Blood.

Nearly three years ago the commission ordered all electric utilities having gross annual operating revenues in excess of $25,000 to adopt a uniform system of accounts, but "up to the present time no definite value for rate-making purposes has been placed upon the most important utilities in this state," the report said.

Signed by Chairman Ward C. Holbrook and Commissioners O. A. Wiesley and W. K. Granger, the report also outlined other activities of the commission and what has been accomplished in the way of rate adjustments and other regulatory efforts. The report continued:

"The four largest electric utilities in the state, the Utah Power & Light Company, the Telluride Power Company, the Southern Utah Power Company, and the Uintah Power & Light Company are now engaged in the work of reclassifying their property accounts in conformity with this system of accounts. It is contemplated that this program will be completed within the next fiscal year.

"These utilities are also determining and setting up the original cost of their properties and making studies as to the proper rate of depreciation to be applied to them. When these three primary problems—the reclassification of property accounts, determination of the original cost of properties and rate of depreciation—have been solved sufficiently to provide a basis for the commission to work upon, a sound foundation will have been laid so that the matters of values and rates may be properly gone into. These factors then may be coördinated with other factors, as enunciated by the courts, for the determination of values of utilities.

"It should also be stated that while this program is being worked out the commission has followed its former policy of procuring rate reductions by negotiation and conference with the utilities, rather than by prosecuting controversial rate cases. This method has been very successful during the tenure of the present commission."

Washington

Rules for Power Districts

THE state department of public service on January 10th granted public utility power districts "free and unobstructed access to all of" the books, records, accounts, and properties of the Puget Sound Power & Light Company.

The department also announced that it would "immediately commence an investigation of the Puget Sound Power & Light Company's books, records, accounts, and properties for the purpose of making proper valuations and establishing fair, just, reasonable, and sufficient rates for the sale of electric energy by said company at wholesale to public utility districts and to rural coöperative power systems."

The order, signed by A. M. Garrison and Ralph J. Benjamin, directors of the department, was in favor of the Washington State Grange and public utility districts of Cowlitz, Chelan, Douglas, Kittitas, and Whatcom counties. These agencies were represented at a hearing last September 15th in Seattle by a Seattle legal firm and E. K. Murray.

In the ruling, the department swept aside a company argument that the PUD attorneys were seeking the information as "subterfuge" in order to get the company's books for use at condemnation proceedings already started against the company by several of the districts. In this respect, the order said "we should not give any consideration to the fact that complainants may obtain from the books and records of respondent facts of importance in the various pending condemnation proceedings."

Wisconsin

Power Rates Extended

THE state public service commission recently extended through 1940 five rate schedules of the Wisconsin Power & Light Company for industrial power customers.

These are nonstandard schedules which have been kept in force since July, 1936, when standard power rates were ordered because some customers served under the nonstandard schedules would otherwise have experienced considerable increases in their bills.

The Latest Utility Rulings

Bond Issue Disapproved Where Common Stock Issue Found to Be Feasible

WHETHER a public utility company should issue bonds for capital additions when common stock can be issued on favorable terms is not, according to a decision of the Securities and Exchange Commission, a matter entirely for company management. The commission, by a 3-to-2 decision, refused to permit a declaration for the issue of bonds for reimbursement of the treasury to become effective, although it permitted to become effective a declaration as to the issuance and sale of bonds for refunding purposes.

The reasons given for refusing approval of the bond issue for reimbursement of the applicant's treasury because of capital expenditures were that the company could readily obtain the needed amount through the sale of additional common stock on favorable terms; that the ratio of common stock and surplus to total capitalization was but 20 per cent (a ratio considerably lower than corresponding ratios of other companies); that the balance of depreciated property remaining for common stock and surplus after making allocations to debt and preferred stock was approximately 11 per cent; and that if the bonds and a new stock issue were permitted and the proceeds used entirely for property additions, the ratio of debt to depreciated property would be 56.4 per cent, which was considered by the commission to be too high.

Reference was made to the fact that an offer had been made to purchase, at a price at least equal to book value, enough common stock to assure the company a minimum equal to the proposed bond issue for capital additions. Reference to this offer, it was said, was not in any way intended to indicate that the company was under duty to market any of its securities to the offerer, but this showed that common stock financing was available.

In making a finding that financing by such a bond issue was not appropriate, the point was made that any program of financing must take into account the possibility of future changes in earning power.

A corporation may, at a time of financial stress, be confronted with the necessity of obtaining capital for replacement or expansion of plant facilities or to meet maturities. At that time financing may be possible only if the corporation has not previously exhausted its credit by the issuance of bonds. The commission disclaimed, however, any intention to intimate that the funded debt of the company had reached the danger point, or would reach that point if the additional debt were created.

An offer made by the two principal underwriters that they would not receive any underwriting fees in connection with the sale of the authorized bonds, in the event that they should later be found to be affiliates, was accepted by the commission.

An application by the parent corporation for approval of acquisition of common stock to be issued by the subsidiary was dismissed on the ground that such acquisition was exempt under the rules of the Securities and Exchange Commission.

A declaration as to the issuance and sale of common stock at $28.25 per share was permitted to become effective. *Re Consumers Powers Co. (File No. 43-270).*

Premium Call Rate on Bonds Raised to Increase Marketability

AN application by a telephone company for authority to modify outstanding bonds and an indenture of mortgage securing the bonds so as to raise the premium call rate was approved by the Tennessee commission. The purpose of the change was to enable a parent corporation, to which the bonds had been sold, to sell the bonds at a higher price.

Before granting authority the commission obtained a stipulation that, after expenses involved in acquiring and disposing of the bonds had been defrayed, the excess of the sale price over the amount for which the bonds were originally purchased should be paid into the treasury of the subsidiary operating company. The bonds had been sold to the parent company at $960 per $1,000 face value bond. The parent company was able to dispose of the bonds under the changed terms at approximately $1,057.50 for each bond. Expenses were not to exceed $25 per $1,000 face value bond.

The opinion was expressed by the commission that the increase in the rate of call should not be authorized unless adequate benefits would be accorded to the operating company as a consideration for the change. The commission said in part:

> A bond indenture and outstanding bonds thereunder constitute an existing contractual obligation between the issuer of those bonds on the one part, and the present holder of the bonds for value on the other part. A modification of the contract which renders such bonds a more attractive investment or a more valuable asset on the one part, should be supported by adequate considerations.
>
> It is unfortunate that the close relationship existing between an operating utility and its holding company makes arm's length dealings between these two parties to a contract well-nigh impossible. It is accordingly incumbent upon the railroad and public utilities commission, which guards the interests of the users of utility services in the state, to closely scrutinize all such contracts, to assure that ample consideration in the way of benefits to be derived should be made available to the operating company within the state to set off against any additional burdens which may be assumed by that party.

The applicant had insisted that, aside from any benefits to be derived from the changes proposed, it would be in no worse position than at present as a result of the changes. The commission was struck by the fact, however, that the applicant had been unable to satisfy those responsible for the investment of funds of insurance companies interested in this particular bond issue, that the circumstances surrounding the company were such that it could not beneficially refinance its obligations under such terms as would render it advisable to call them. The commission said that if the insurance companies could not be convinced, the commission should not hastily be convinced either. The insurance companies, it was said, evidently believed that the call price was a very material consideration and affected the value of the bonds to any person desiring to obtain a long-term investment. *Re Southern Continental Telephone Co. (Docket No. 2363).*

Kansas Commission Order Fixing Minimum Rates for Contract Carriers Sustained

ON an appeal from an order of the Kansas commission fixing minimum rates for contract motor carriers the state supreme court held that a trial court was correct in holding the order of the commission was not unlawful, unreasonable, or contrary to law. The order under consideration was said to be the first attempt at regulating rates for contract carriers in the state.

The Kansas statute does not give the commission authority to fix rates for contract carriers, but it can fix only minimum rates. Accordingly, the court pointed out, the contract carriers are not compelled to haul at the established minimum rate but can charge under the law and the order of the commission any price they wish to charge so long as it is not less than that rate.

It had been argued that there was no evidence of a statewide identity of conditions to justify a statewide identity of contract carrier rates or a blanket order, and that the order was made without sufficient evidence to support a finding that contract carrier rates should be related to common carrier rates. The commission heard evidence from contract carriers from different parts of the state and operating under various circumstances. Had the commission gone into the question of the expenses of every contract carrier in the state, said the court, the hearing never would have been completed and the commission would never have had time for its other work. In the words of the court, "the fact is that there are some elements about any freight-rate structure that must be arbitrary."

Finally, said the court, the matter is not *res adjudicata,* but it can be opened by the commission on its own motion or on complaint of an interested party at any time. *Atchison, Topeka & Santa Fe Railway Co. v. State Corporation Commission, 95 P(2d) 554.*

Missouri City Again Fails to Oust Electric Company

FOR the third time in an 8-year legal fight to oust the Missouri Utilities Company, the city of Sikeston lost out in the Missouri Supreme Court. The company operates without a franchise in competition with the municipally owned light and power plant.

In 1932 the supreme court held that the city was estopped from ousting the company by permitting it to operate without objection after expiration of its franchise and by various official acts acquiescing in those operations over a period of about nine years. The court in its recent decision found no such change of conditions as to change the earlier decision.

In its second defeat the supreme court had affirmed a decision of the public service commission refusing to hold that there was no public necessity for the company operations in the city. This was on an application by the city for an order requiring the company to abandon operations. *City of Sikeston v. Missouri Utilities Co.*

Reorganization Plan Disapproved for Lack of Commission Power to Approve Abandonment

A PETITION by the Boston, Revere Beach and Lynn Railroad Company to the Massachusetts Department of Public Utilities for authority to abandon all its stations and train stops and discontinue all of its transportation operations, and for approval of a plan of reorganization filed in a Federal court under § 77B of the Bankruptcy Act, was dismissed and disapproval of the plan was certified. The department held in substance that it had no delegated authority to approve a complete abandonment of service and disposal of the company's property.

The main purpose of the reorganization plan, it appeared, was to promote the liquidation of the property. Commission-

er Webber, commenting on this feature, said:

> . . . it is also to be observed that the plan submitted for our approval by the petitioner is not, in our opinion, in the true sense, a reorganization plan. The term reorganization, in the spirit of the radical departure from the general bankruptcy process introduced by § 77B, brings to our minds such thoughts as reconstruction, repair or cure, and in that sense it seems that advisory coöperation of state regulatory commissions is necessary to the proper functioning of that statute when public utility corporations are before the court. The office of reorganization, as we interpret that term, is a change to a more satisfactory form or method of operation, and not the ultimate extinction or liquidation, as we view the main purpose of the plan itself — to preserve the business of the debtor by allowing him to continue in possession. Liquidation presumes bankruptcy, and distribution of assets among creditors, and the final chapter of the book.

The department was of the opinion that a statute relating to railroad abandonment proceedings conferred jurisdiction upon the commission only with respect to abandonment of occasional stations rather than an entire railroad. The rule was stated that a chartered railroad corporation cannot, as an ordinary business corporation, divest itself of all its property without legislative consent. The rule, it was said, goes even beyond direct conveyances and transfers without legislative authority and with logical consistency places under the ban all contracts and arrangements having a disabling effect upon the ability of a public railroad to perform its public functions. Furthermore, said Commissioner Webber:

> Nor is the fact that the franchise of the petitioner road is withheld from the transfer, of legal consequence. The prohibition of law is not limited to franchises only. Any alienation of substantially all property, real and personal, so as to disable a railroad from carrying on the business which it has been chartered to do for the benefit of the public is equally as effective. And it makes no difference whether the transfer is absolute or conditional or to take effect immediately or at some future time.

Re Boston, Revere Beach and Lynn Railroad Co. (D.P.U. 5903).

Overheads Erroneously Charged to Operation Are Transferred to Capital Account

THE New York Supreme Court, appellate division, annulled an order of the commission directing a municipality which was operating an electric plant to strike certain proposed journal entries from its operating property accounts which the village sought to write into its capital accounts. It seems that the superintendent of the plant, owing to errors in accounting, had charged certain so-called overhead costs to operating expenses. Under the uniform system of accounts such items would have been properly chargeable to fixed capital.

In response to the commission's contention that, even if the overheads had a basis in fact, since they had been once charged to operating expense accounts, they cannot now be charged to fixed capital accounts so as to increase the latter, the court said:

> The petitioner in this case had no exact guidance or instruction, but was only regulated and supervised by the commission in a rather loose and perfunctory manner. Its superintendent, though in charge of the bookkeeping, was not an expert accountant. It was a small utility and he had many duties to perform. He followed the system of accounts prescribed for private utilities as best he could interpret it. Under such circumstances his error cannot be justly found to be a deliberate error of judgment after full and complete knowledge of a choice between two systems. . . . Rather it was a mechanical error made in an effort to interpret a system that is still subject to some controversy, and therefore should not be conclusive against petitioner.

The court, in support of the above holding, mentioned that it had previously held in another case that overheads should be allowed even though they were originally charged to operating expense, and also that a readjustment is not to be

denied because of past profits due to mistakenly enlarged operating expenses. Furthermore, the court made the following statement:

> The conclusion of the commission that the overheads claim was wholly theoretical is not sustained by any substantial evidence, and quite to the contrary there is fair evidence that such overheads were actually incurred. The conclusion that such overheads, assuming them to have been actually incurred, having once been charged to operating expenses cannot now be corrected and charged to capital accounts is not sustained as a matter of law. For reasons heretofore indicated the action of the commission in directing that these overheads be stricken out should be annulled.

However, it was held that the commission properly ordered that the estimated average cost of inducing additional customers to take service from a municipal plant be stricken from the operating property accounts where there was no evidence that any money was ever expended for that purpose.

Money expended by the village to investigate and appraise an electric plant before the purchase thereof was held to represent in part the cost of the plant used and useful in the public service. Therefore, the court held that the commission had erroneously ordered the proposed entry representing that item to be stricken from proposed operating property accounts, such items never having been charged to fixed capital. *Village of Wellsville v. Maltbie et al. 15 NY Supp(2d) 580.*

Adequate Service at Reasonable Rates Necessary to Preserve Monopoly

THE Arkansas commission by order canceled the protection of utility companies against competition when the companies do not provide adequate service at reasonable rates. The commission authorized one company to distribute natural gas in competition with another. The commission found that rates had been reduced only to a negligible extent in the case of domestic and commercial consumers. At the end of the hearings the existing company offered to meet a lower industrial rate if allowed to retain the consumers involved. The order stated:

> This eleventh-hour offer . . . appears to be an admission that the rates charged these three industrial consumers are too high and that it is attempting . . . to remove competition and to continue its policy of charging what the traffic will bear to other industrial customers.
>
> To deny the application on the ground the intervener company now offers to meet the competition would give added incentive to this utility to keep its territory and rates without fear of competition, secure in the knowledge that should competition be threatened it can eliminate it by reducing its rates where competition arises.

Re Louisiana-Nevada Transit Co.

Other Important Rulings

THE Pennsylvania commission, although finding rates of a water company did not produce an excessive return, found that such rates were not attractive to prospective customers, and therefore ordered the company to accumulate consumer consumption data with a view to designing a tariff at some future date which would prove more attractive to prospective customers and result in greater utilization of the company's facilities. It was said to be incumbent upon the company to assist the inhabitants within its territory in obtaining a proper supply of water, and it was said to be reasonable to assume that a downward revision of rates would attract many prospective customers, particularly those with limited means. *Mastalski et al. v. Portage Township*

Water Co. (Complaint Docket No. 11698).

The New York commission held that the provision of the Grade Crossing Elimination Act of 1939 providing for the inclusion of incidental improvements rendered necessary or desirable because of such elimination and reasonably included in the engineering plans thereof does not authorize the inclusion of the cost of relocating privately owned water mains located in a public highway and so charging the cost of this work to the state and the railroad company involved. *Re Western New York Water Co. (Case No. 4666).*

The appellate court of Indiana reversed a judgment declaring that certain motor carriers were free to operate their trucks on state highways without registering with, or obtaining permits from, the state commission, the court holding that persons hauling commercial fertilizer and crushed limestone used as fertilizer from plants or quarries to farmers are not exempt from such registration under a statutory exemption of haulers of "agricultural commodities." *Stiver et al. v. Mayhew et al. 23 NE(2d) 614.*

The Wisconsin Public Service Commission, in approving the sale of utility property by one company to another, adopted a figure reflecting original cost less depreciation, deducted on a sinking-fund basis, as a basis of accounting for the utility property. *Re Wisconsin Central Utilities Co. (2-U-1502).*

The Wisconsin Supreme Court held that the commission had no power to reopen for further evidence an order fixing just compensation, terms, and conditions in a proceeding by a municipality to acquire public utility property from a privately owned company, the commission's power in such a proceeding being quasi judicial and not legislative. *Superior Water, Light & Power Co. v. Public Service Commission, 288 NW 243.*

The Securities and Exchange Commission held that earning power is the proper criterion of value for purposes of reorganization pursuant to the Public Utility Holding Company Act as distinguished from value for rate-making purposes. Therefore, such considerations as book values, original and historical costs, and reproduction costs new less depreciation, in determining the value of utility property for the purposes of reorganization are generally of evidentiary significance only in so far as they bear upon earning power. *Re Utilities Power & Light Corp. (File Nos. 34-8, 52-3,5,9, 10, 59-1, Release No. 1655).*

The Kansas City Court of Appeals held that an appellate court, reviewing a commission order denying an application for a certificate, is confined to the question of whether or not the order is unreasonable and unlawful. *State ex rel. Ringo v. Public Service Commission et al. 132 SW(2d) 1080.*

The district court for the District of Columbia recently held that the word "employees," as used in the Motor Carrier Act provision that it shall be the commission's duty to regulate carriers by establishing reasonable requirements with respect to qualifications and maximum hours of service of employees, is inclusive, and does not limit the commission's powers to the drivers of trucks and busses. *American Trucking Associations, Inc. v. United States et al.*

Carriers must furnish grain doors for installation in cars to be used for bulk grain loading, the Missouri commission has held, but the work of installing the grain doors should be performed at the shippers' expense. *Board of Trade of Kansas City et al. v Alton Railroad Co. et al. (Case No. 9610).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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COMPRISING THE DECISIONS, ORDERS, AND RECOMMENDATIONS OF COURTS AND COMMISSIONS

VOLUME 31 PUR(NS) NUMBER 3

Points of Special Interest

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Re Georgia Power & Light Company

[File No. 16498-1, Docket No. 5312-A.]

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(WILHOIT and PERRY, Commissioners, concur in separate opinions.)

[November 7, 1939.]

RULE *nisi issued to electric utility company to show cause why rates charged for electric service under residential and commercial rate schedules should not be reduced; rate reductions ordered.*

APPEARANCES: J. F. Bailey, President, Valdosta, L. B. Moore, Asst. to the President, Valdosta, John D. Harris, Attorney, St. Petersburg, Florida, Kenderick R. Fenderson, Attorney, St. Petersburg, Florida, and

T. Guy Connell, Attorney, Valdosta, for the Georgia Power and Light Company; O. W. Franklin, City Attorney, Valdosta, O. W. Franklin, Jr. Attorney, Valdosta, Lee S. Purdom, City Attorney, Blackshear, and H. M. Pafford, City Manager, Waycross, for consumers; Marshall Allison, Assistant Attorney General, N. Knowles Davis, Chief Engineer, and Orrin S. Vogel, Valuation Engineer, for the Commission.

By the COMMISSION: The present proceeding was initiated by the Georgia Public Service Commission (hereinafter referred to as the Commission) on its own motion under the rule nisi above referred to in a serious effort to adjust, with equity and fairness, for the time being at least, the domestic and commercial rate schedules for electric service rendered by the Georgia Power and Light Company (hereinafter referred to as the company).

General Discussion and History of Company

The respondent company was formed through the consolidation of the Valdosta Lighting Company, the Ware County Light and Power Company, the Bainbridge Power Company, the Seminole Power Company, and the Waycross Ice and Cold Storage Company. Subsequently, the assets of the Charlton County Power Company serving Folkston, Georgia, and the Farmer's Ice Company serving Amsterdam and Attapulgus, Georgia, were acquired.

Commission records show that the Waycross Electric Light and Power Company was organized and chartered by the Ware County Superior Court on August 12, 1890, for the purpose of rendering electric service in Waycross. After passing through several different ownerships this company became the Ware County Light and Power Company through a charter granted on April 8, 1910, by the Ware county superior court, which company was organized to acquire the Waycross plant and distribution system. This company subsequently acquired a franchise from the city of Blackshear, Georgia, on April 27, 1925, and started operations there on August 2, 1925. The electric system in the city of Jesup was acquired about July 6, 1926, and during this same year franchises were acquired by this company in the towns of Homerville, Offerman, Patterson, Screven, and Waresboro. The original Waycross generating plant was built in about the year 1900 and a producer gas plant with two gas engines was installed in 1910 and abandoned in 1913. Of the present generating plant one 500-kilowatt turbo generator unit was installed in 1913, a second 500-kilowatt turbo generator unit was installed in 1919, and the 2,500-kilowatt unit was placed in service in 1926. This largest unit was second-hand when installed, having been previously in service in Keyport, New Jersey, since 1916.

The Valdosta Lighting Company came into existence on May 11, 1912, through a charter granted by the Lowndes county superior court and this company took over the Consolidated Ice and Power Company operating in Valdosta. Franchises were acquired by this company from the

towns of Boston, Hahira, and Sparks, in 1924 and 1926.

The Bainbridge Power Company was chartered on October 7, 1919, in the Decatur county superior court and constructed the small Spring Creek Hydro Plant which was put into operation in the summer of 1922.

The Municipal Service Company, as a holding company, acquired the controlling securities of the Ware County Light and Power Company about December, 1923, and of the Valdosta Lighting Company about October 31, 1924. It also acquired the controlling securities of the Waycross Ice and Cold Storage Company. The Municipal Service Company was a subsidiary of the Jersey Central Power and Light Company, of which the Bainbridge Power Company was also a subsidiary. All the utility companies merged to form the Georgia Power and Light Company were therefore affiliated companies of the Municipal Service Company prior to the merger. Properties of the Municipal Service Company were operated by Day and Zimmermann until about March 4, 1925, and by General Engineering and Management Company from about March 4, 1925, to May 31, 1927, when the consolidation was made forming the Georgia Power and Light Company.

The Charlton County Power Company was acquired by the Georgia Power and Light Company in April, 1930. Some years later the Folkston Power Company, a subsidiary of the Georgia Power and Light Company, was formed to operate the Folkston system, and this company remained in existence from January 3, 1935, to December 31, 1936, after which time the Folkston Plant was again acquired by the Georgia Power and Light Company.

On August 1, 1935, the Farmer's Ice Company serving the towns of Amsterdam and Attapulgus was acquired by the Georgia Power and Light Company.

During 1928, the common stock of the Georgia Power and Light Company was acquired by the Seaboard Public Service Company, which company was controlled by the National Electric Power Company, which in turn was controlled by the Middle West Utilities Company. The Jersey Central Power and Light Corporation, of which the Municipal Service Company was a subsidiary prior to the formation of the Georgia Power and Light Company, and whose name was changed to National Public Service Corporation on March 24, 1925, was also a subsidiary of the National Electric Power Company.

The Penn-Southern Power Corporation acquired the common stock of the Georgia Power and Light Company on June 28, 1933. This company was organized as a holding company to own the entire common stocks of the Georgia Power and Light Company, the Florida Power Corporation, and other companies, all of which were bankrupt Insull subsidiaries.

During 1935, the Southeastern Electric and Gas Company, a subsidiary of the Associated Gas and Electric Company, acquired all the common stock of the Georgia Power and Light Company and so held it on December 31, 1938.

The respondent company renders electric service to that part of Georgia

lying along and near the Florida border. The following communities are served at retail, Jakin in Early county, Donalsonville in Seminole county, Colquitt in Miller county, Amsterdam, Attapulgus, Bainbridge, Climax, Faceville, and Fowlstown in Decatur county, Boston and Coolidge in Thomas county, Barwick and Pavo in Thomas and Brooks counties, Barney and Morven in Brooks county, Cecil and Sparks in Cook county, Ray City in Berrien county, Hahira, Lake Park, Naylor, and Valdosta in Lowndes county, Lakeland and Stockton in Lanier county, Howell and Statenville in Echols county, Pearson in Atkinson county, Homerville and DuPont in Clinch county, Waycross and Waresboro in Ware county, Folkston, Homeland, and Race Pond in Charlton county, Blackshear, Offerman, and Patterson in Pierce county, Hoboken and Nahunta in Brantley county, and Jesup, Odum, and Screven in Wayne county. The company is serving rural customers within this general territory from 6.9 kilovolts and 11 kilovolts rural distribution lines built with funds advanced by the Rural Electrification Administration.

The company renders service at wholesale to Adel in Cook county, Brinson in Decatur county, Cairo and Whigham in Grady county, Iron City and Lela in Seminole county, and Quitman in Brooks county. Although the company owns one hydro generating plant and a steam standby plant, the principal source of energy is from Florida, supplied by the Florida Power Corporation, and affiliated Company. The hydro plant has an installed capacity of 800 kilowatts and is located on Spring creek in Decatur county and the steam plant located at Waycross has an installed capacity of 3,500 kilowatts.

An outline and detail map showing graphically the territories served and indicating the company's facilities, is attached hereto and marked Exhibit No. 1. [Map omitted.]

Respondent company likewise operates water plants at Barwick, Colquitt, Climax, Donalsonville, and Pavo, ice plants at Bainbridge, Colquitt, Donalsonville, Folkston, Valdosta, and Waycross, and owns a packing plant at Waycross which are not under the jurisdiction of this Commission and therefore were not involved in this hearing and will not be considered in this order except in so far as the questions of segregation and allocation may arise.

All the territory adjacent to that served by the Georgia Power and Light Company in the state of Georgia is now served by the Georgia Power Company and REA lines, and the comparison thus afforded of the variance of the level of the rates in these neighboring communities accounts to some extent for the complaints which have given rise to the several investigations in the rates of this company which were reviewed in the company's written response filed in this present proceeding. However, the company refers to nine separate orders reducing its rates since 1930, but as a matter of fact the orders of this Commission show that since that date the following are all the rate revisions brought about by Commission action and several of these reductions were filed voluntarily

by the company after the Commission issued its rule nisi:

Effective Date	Classification	Estimated Annual Reduction	Gross Annual Revenue Electric
Feb. 1, 1934	Residential	$13,908	$631,049
Aug. 1, 1934	Residential & Commercial	66,463	656,380
Apr. 1, 1937	Commercial	2,200	801,374
Sept. 1, 1937	Residential	18,260	863,713
Apr. 1, 1938	Commercial	12,500	919,913
June 30, 1939			988,970

It is interesting to note the continuous and substantial increase in the company's gross revenue during this period in which the rate reductions were cited by the company. Within this time there has been no substantial increase in the territory served by the company and therefore the above increases in revenue are not due to any substantial enlargement of their system.

While the present proceeding was only recently commenced, namely, by rule nisi issued on the 15th day of March, 1939, and made returnable on the 24th day of May, 1939, and hearing on which was continued on motion of the company until June 21, 1939, and again continued on motion of the company to July 12, 1939, it is a part and developed out of the hearings and conferences had in connection with the two prior rules nisi which resulted in the two last rate reductions above referred to in 1937, and 1938. During these investigations the Commission found itself seriously handicapped by reason of the lack of information, both as to fair value, as well as to operating expenses in treating the rates of this company further.

Accordingly, the rule nisi which had been issued in 1937 was dismissed by the Commission upon the voluntary and separate filing by the company of somewhat reduced schedules of domestic and commercial rates, with the announcement that the Commission would make a complete field inventory and cost study of the company's physical property, used and useful, in supplying electric service to its customers, for the purpose of determining the fair value as a rate base. At the same time, the further announcement was issued that a careful and detailed study of the operating revenues and expenses of the company would be made.

By reason of the Commission's limited staff it was necessary first to organize an appraisal department, and the greatest possible care was exercised in the selection of a thoroughly competent valuation expert to supervise this work. After a careful and exhaustive search the Commission secured the services of a very capable and experienced engineer, Mr. O. S. Vogel, who is an experienced electrical engineer, specializing in utility appraisal work. He has been actively engaged in utility valuation work for a period of fifteen years, of which approximately eleven years were spent in the appraisal of electric utilities in Georgia. For two years he was connected with a consulting engineering firm in New York specializing in electric utility valuation; and for one year he was engaged in private practice as a valuation engineer working on electric utilities. Since January, 1938, he has been engaged as a valuation expert for this Commission. It was brought out in the hearing that the Commission's valuation engineer had made more than fifty appraisals throughout the eastern and southeastern states,

and that he was an experienced utility cost accountant.

This engineer, with the Commission's chief engineer, Mr. N. Knowles Davis, was placed in direct charge of the undertaking, including the organization of the necessary field and office force in order to carry out the work. Active work was begun by the Commission's staff in January, 1938, when a careful and complete study was made of the Commission records pertaining to the respondent company and its predecessor companies in order to become familiar with the history of the company as well as to determine what historical cost figures could be developed.

There are a great many records on file with the Georgia Public Service Commission pertaining to the properties which were consolidated to form the Georgia Power and Light Company. There have been several previous rate cases in connection with those properties where values have been submitted either as partial values or book figures. A thorough examination of the records pertaining to the individual companies indicates that the record-keeping methods used prior to 1924 were not standardized, which makes it very difficult to make a historical study from the records concerning those properties.

There are two main independent companies which were consolidated in forming the Georgia Power and Light Company. The Waycross Electric Light and Power Company, which later became the Ware County Light and Power Company, and the Valdosta Ice and Manufacturing Company, which later became the Valdosta Lighting Company.

The first records that we have of the Ware County Light and Power Company pertain to the year 1909. The property was apparently sold at about that time to Boemister and Loomis and a horse back appraisal was made of the property which indicated that its value was approximately $60,000. The Ware County Light and Power Company was formed in 1910; bonds and preferred stock in the amount of $200,000 were authorized. It was estimated at that time that approximately 61 per cent of the property was in the electric department, the rest being ice property.

Those appraisals were carefully studied to gain a better understanding of the make-up of those properties. The original records do not show allocations of costs by departments, and it was useless to try to make an accurate breakdown.

The records on file with the Commission pertaining to the net additions to the Ware County Light and Power Company from 1910 through 1924 afford a good picture of the growth of this property. However, this is the period prior to the adoption of the uniform system of accounts and, therefore, an analysis of those costs fail to show how the improvements were charged or how, or on what basis, the retirements were estimated. For that reason, such figures are of little value in this case.

There is in the file an appraisal of the electric department of the Ware County Light and Power Company, prepared by Mr. Eley, in which he developed the Reproduction Cost as of January 1, 1922. The amount set out for the electric department is approximately $370,000. An examina-

tion of that appraisal discloses that it includes 23 per cent for overheads and that an allowance for contractor's fees has been made in the direct charges, 10 per cent being allowed on all jobs greater than $5,000 and 15 per cent on all jobs less than $5,000. A report of that kind is very valuable as a study of the history of the property and the units in place at a fixed date, but is of little use at the present time in the determination of value.

Studies were made of reports that were prepared by George Huling of the Irving Trust Company of New York, who were trustees in bankruptcy for the National Public Service Company, a company that had control of these properties at the time, and which reports were made for the purpose of consolidating the properties. Mr. Huling points out that his studies were seriously handicapped because the records were incomplete and in some cases lacking entirely at that time. Because of the absence of complete records and because of the many changes in the properties and in the record-keeping methods used we do not consider the old records of real value to us except as a source of historical information.

The figure arrived at as the book value by Mr. Huling as of October 31, 1924, for the Ware County Light and Power Company depreciable property, based on such records as he could obtain, was $261,230.40. Net additions to Mr. Huling's figure up to the time of the consolidation on May 31, 1927, results in an amount of $531,-612.46 for depreciable property of that company. At the time Mr. Huling set up the books he classified the following as nondepreciable items which were added: Land $15,736.60, organization $274,287.40, engineering and superintendence $13,213.08, interest $3,482.06, and miscellaneous $446.94. Combining those figures the amount set up May 31, 1927, for the Ware County Light and Power Company was $838,778.54.

The excessive allowances for intangible items, and the lack of complete information regarding the original costs, makes such information of little worth to the Commission in its effort to determine value. It is apparent, from the early records, that the books reflect the increases in the plant account resulting from each purchase and reorganization, and they do not represent original cost.

The Valdosta Ice and Manufacturing Company was organized in 1910. At that time an appraisal was made by Mr. C. O. Pinch which indicates that the property was worth approximately $60,000. Between 1910 and 1912 the Consolidated Ice and Power Company was formed and capitalized at $100,-000. In May, 1912, that company was dissolved and the Valdosta Lighting Company organized.

There is a great deal of information pertaining to the additions by accounts to the Valdosta Lighting Company in the file of the Commission. However, it is very difficult to make an analysis of book additions as many of the records were made prior to the adoption of the uniform system of accounts in 1924. The bookkeeping procedure prior to that time was far from uniform and little care or supervision was given to the making of clear and accurate records for future use.

There is an appraisal on file by Mr. H. T. Hartman made in June, 1912.

The electric department of the Valdosta Lighting Company is set out at that time in the amount of $193,356.03; that figure includes a 10 per cent charge for contractor's profit. In 1915 another appraisal was made by Solomon and Norcross, and an examination of the accounts set out therein when compared with the 1912 appraisal figures indicate that certain items of property such as land, structures, and miscellaneous property apparently have been arbitrarily increased. Another factor that tends to destroy the value of this appraisal, as a record of cost, is that an item of 25 per cent for going concern value has been added and no explanation has been given regarding the overheads included in the appraisal.

In 1924, which is the date that the control was acquired by the Municipal Service Company, the plant account was set up and the amount shown for depreciable property, according to Mr. Huling, was $195,715.79. The amount recorded on the books for additions after that date, including properties purchased, by the Valdosta Lighting Company up to the formation of the Georgia Power and Light Company on May 31, 1927, is $845,606.27. Properties purchased include the Bainbridge Power Company, Seminole Power Company and the Boston Distribution System, which were recorded on the books in the amount of $444,847.24. At the same time the following nondepreciable items were added to the book figure set up for the Valdosta Lighting Company: Land $38,955.50; organization $229,356.64; appreciation $119,331.26; engineering and superintendence $20,277.74; interest $37,638.80; contractor's advances $323,018.33; and miscellaneous $22,650.32. Combining those figures the amount set up May 31, 1927, for Valdosta Lighting Company was $1,636,834.86.

The book figure for the consolidated properties as of May 31, 1927, for nondepreciable property of the Georgia Power and Light Company was $1,377,218.73, and the total of the nondepreciable items added is: Land $54,692.10; organization $503,644.04; appreciation $119,331.26; engineering $33,490.82; interest $41,120.86; contractor's advances $323,018.33; and miscellaneous $23,097.26, giving an over all total of $2,475,613.40.

We have shown that the records available to the Commission regarding the historical cost are not capable of analysis and that they have been arrived at and established by others who did not have all the facts necessary to make a comprehensive and accurate study. For that reason and because of such items as organization and appreciation in the amount of $622,975.30, which is 33.6 per cent of the total tangible property at the date of the consolidation, such records cannot be relied upon except as a source of historical information relating to the development and organization of the property.

In advance of the field work which was begun in March, the Commission's valuation engineer in company with the Commission's chief engineer, who was familiar with the company's properties, made a complete inspection of all the physical property preparatory to the making up of necessary forms for field work and the determination of a necessary field force in

advance of the actual commencement of the field inventory.

This field inventory was completed in September, 1938, following which the Commission's engineering staff met with the proper representatives of the company for the purpose of checking the items of property with the view of coming to an agreement as to the actual count of items and units of property in place, which result was fully accomplished in advance of the commencement of the actual hearing on the rule. Following the completion of the field work the task of compiling was begun, and by the close of the year this was finished, and the engineering staff visited the office of the company at St. Petersburg, Florida, where the records are maintained, and secured from the books and work orders of the company all additions to the property, up to and including December 31, 1938, which had been made after the field inventory was taken. Unit prices were then applied to the inventory by the Commission's staff, who later analyzed the operating revenues and expenses of the company for the year 1938 as disclosed by the books of the company, and for all the years since the organization of the company as shown by the annual and monthly reports to the Commission.

As stated above, when the matter came on for hearing on May 24, 1939, the return date of the rule, the respondent company stated that additional time would be required to complete the preparation of the information necessary for a proper response, whereupon the Commission, through its Chairman, announced that additional time would be allowed with the hope and feeling that the company would at that time be prepared to present all such evidence on its behalf as it might feel called upon to make and present.

Furthermore, in a spirit of coöperation, copies of the inventory and appraisal prepared by the Commission's staff for presentation at the hearing were then and there given to the company six weeks prior to the public hearing for its examination and study. Accordingly, after the further continuance above recited further hearing on the rule was commenced on July 12, 1939, and continued through July 14, 1939, being resumed on July 19, 1939, and being concluded on August 1, 1939, requiring a record of 1,369 pages, besides a total of 58 exhibits offered by the respondent company and 9 by the Commission.

At the beginning of the hearing, the Chairman announced that in the interest of simplicity and clarity of the record, the hearing would be divided into two parts, the first to be devoted entirely to the question of value for rate-making purposes, and the second part to the question of operating revenues and expenses.

Part I—Value for Rate Making

Two hundred and fifty pages of the total record, three company exhibits and 8 Commission exhibits were devoted to the latter question, while the balance of the record and exhibits were on the question of value. Only one exhibit was offered by the Commission on that question, that being the complete inventory and appraisal made by its staff developing reproduction cost new and present value. Instruction was given to the Commis-

sion's valuation engineer to proceed to ascertain the fair value of the company's property, used and useful, in the rendition of service on the basis of reproduction cost using normal prices.

The company almost entirely confined its case to the presentation of testimony on the single element of fair value that of reproduction cost. No direct testimony at all was offered by the company on the question of original cost other than the evidence as to book figures. The only testimony along that line was in the nature of rebuttal or supporting testimony offered at the very conclusion of the hearing by Mr. A. C. Herron, as to the original cost of the construction of the 66-kilovolt transmission lines, the record of which the witness testified had been located only two weeks prior to the hearing, but as a matter of fact this testimony can afford but little guidance to the Commission for the reason that the testimony was confined solely to transmission line construction and did not cover any of the other portions of the company's property. If original cost is to be considered, the original cost of the entire property should be known in order to be helpful in the ascertainment of fair value. Furthermore, the company did not present this evidence as a means of determining original cost, but with the endeavor to substantiate certain costs included within their appraisal which were considerably higher than established by the Commission's engineer.

[1, 2] The respondent's written answer set forth the capital structure as of December 31, 1938, to be 10,993 shares of preferred stock with a book value of $995,161, 21,650 shares of no par common stock with a book value of $1,462,770, first mortgage 50-year gold bonds in the principal amount of $3,139,000 bearing interest at the rate of 5 per cent, bonds of the town of Climax in the principal amount of $9,500, assumed by the company, and an unpaid balance of $95,911.75 on an original loan of $109,200 from the Rural Electrification Administration to the company, but no evidence was offered as to the present market value of the company's securities. However, published security market quotations reveal that the present market value of these securities is far below the values set out above. Witness W. M. Hickey on the question of sound financing and a necessary return for sound operation, testified to the effect that the market value of the stocks and bonds is one of the elements to be considered in determining fair value, and not overlooking this requirement, it is apparent that little weight can be given to this element of value in the present case as the securities of this company cover all its present holdings including water plants and ice plants above enumerated, as well as a packing plant in Waycross, and if as a matter of fact the securities be considered as assigned solely to the electric department, the electric property would be bonded for approximately 100 per cent of its worth, leaving no remaining value for the junior securities.

While the rule nisi provided for the fixing of revised rates it was determined, as above stated, that the Commission would proceed first with the question of value and determine and establish the rate base before

going into the question of rates and, therefore, "Calculations as to the reasonableness of rates" required to be considered by the Supreme Court in the Smyth v. Ames Case, such as "The probable earning capacity of the property under particular rates" and "The sum required to meet operating expenses" will be considered when the Commission enters upon the question of fixing rates.

Book Value and Original Cost

The testimony of the company's witness disclosed that the total of the electric plant account as reflected by entries on the books of the Georgia Power and Light Company as of December 31, 1938, was $4,116,193.54. Company's Exhibits Nos. 1 and 2 were introduced to support this testimony, consisting of a Comparative Balance Sheet, and a break-down of the Electric Plant Book figure, by accounts, as of December 31, 1938. The company's witness, Mr. E. W. Neate, auditor, who prepared and identified these exhibits testified that the figures there shown do not represent the original cost of the property, but represent the cost at which the property is reflected on the books of the company, without depreciation, and in view of the transfers, mergers, and consolidations, we can readily understand how the witness could not identify that figure as true original cost. In this connection the company's witness testified that all he knew about the make-up of the accounts was what the books show. The accounts making up this book value include tangible, intangible, and unclassified property.

It is known from the Commission's records that the Georgia Power and Light Company was incorporated in May, 1927, largely for the purpose of consolidating properties of several utilities, some of which had been in operation for more than twenty years prior thereto in the same territory.

The fixed capital accounts—"Organization and Miscellaneous Intangible Capital"—in the aggregate amount of $416,923.95, are accounts resulting from the various consolidations and mergers that took place in creating this company. It was testified by the company's witness that the excess cost to the company of a property over actual value would be set up in these accounts. It cannot be determined from the record that this amount represents the total excess cost over actual value or merely a portion of it.

Book figures resulting from the consolidation of properties could include past capital losses or other charges which have been improperly capitalized. This is borne out by the fact that the appraised value of the book account—Reservoirs, Dams, and Waterways, according to the company's estimate for reproduction cost, including overheads, is $78,328.01, and the Commission's engineer's appraised value of the same account is $87,232.70, while the amount set out in the books as shown on Exhibit No. 2 for this account is $314,097.31. Apparently sums of money have been set up in this account which do not represent real value of property on any basis of consideration.

Furthermore, it was brought out at the hearing that there were certain items of tangible property included in the book figure which were later eliminated at the hearing in the amount

of $65,766.88, as being of no value to the electric department.

It is also worthy of note that immediately subsequent to the formation of the Georgia Power and Light Company the fixed capital not classified by prescribed accounts was set up in the amount of $1,715,781.98 as of 1927, and this was later distributed to the prescribed accounts. Being first set up as unclassified indicates the company at that time did not know the correct allocation to the proper accounts. Furthermore, the distribution to prescribed accounts was completed in 1933, and in advance of the time when the company made its inventory and appraisal, and such an inventory would be the only source of accurate information for such distribution. We, therefore, question the correctness of the allocations as representing actual value of the individual accounts.

It is worthy of note that during 1931 the sum of $436,725.73 was transferred from this electric account "fixed capital not classified by prescribed accounts" to ice fixed capital account, and the question arises as to whether or not additional sums of money formerly in this electric account should not likewise have been transferred to the ice or to the water and packing plant fixed capital.

The testimony of the company's witnesses and the company's exhibits pertaining to book value as reflected in the plant accounts do not disclose the facts necessary for the Commission to know the full meaning or make-up of these accounts, especially in the light of the inclusion of write-ups and intangibles through mergers and consolidations as disclosed in the Commission's file and as previously reviewed.

In view of these facts little weight can be given to the values reflected on the books of the company as an element in the determination of the fair value of the company's electric property.

The only attempt on the part of the company to develop original cost aside from the book value was in testimony given toward the end of the hearing and pertaining to the 66-kilovolt lines built principally in 1926 and 1927. Witness for the company, Mr. A. C. Herron, testified that about two weeks prior to the hearing he located the original construction cost records of the 66-kilovolt lines of the company, and that he did not know who made the entries on the vouchers. He said the cost ledger was either kept by the firm of F. R. Weller or the General Engineering and Management Corporation.

In this connection files of the Commission indicate that construction cost records of the transmission lines were available to the company in some form and had been available since 1934 when schedules on construction costs of the lines and fees paid were submitted by the company to the commission. However, the engineers of the Commission were not afforded the opportunity of examining those records.

Schedules of the 1926 and 1927 66-kilovolt lines construction, made by the company and on file with the Commission show that the lines were constructed by F. R. Weller, Hoosier Contractors and General Engineering and Management Company. It is also known from records on file with the

Commission that the General Engineering and Management Company which received the greater part of the fees paid was a management company for the Municipal Service Company. The Municipal Service Company held the controlling interest in the properties which later formed the Georgia Power and Light Company, which suggests a total absence of arm's length bargaining on the construction costs involved as well as on the fees paid.

Another witness for the company, Mr. L. B. Moore, testified that the 66-kilovolt lines were built on a cost plus basis by independent contractors, and further that the Sparks-Valdosta line was originally constructed by the Georgia-Alabama Power Company of Albany, Georgia.

According to records on file with the Commission, the fees for the 1926 and 1927 66-kilovolt line construction paid to F. R. Weller, Hoosier Contractors and the General Engineering and Management Company, over and above the entire cost of these lines, were approximately 15.2 per cent of the base cost including lands and rights of way, and 19.9 per cent of the base cost excluding lands and rights of way, and these fees were charged to the engineering and supervision overhead account, which fees were obviously in excess of the necessary cost of engineering and supervision.

There was no other testimony or evidence presented by the company on the question of original cost of its electric property, and from the foregoing review of such evidence as was offered it is apparent that little or no benefit is afforded the Commission in arriving at an enlightened judgment as to the original cost of the property as a whole or in part.

Reproduction Cost

The inventory and appraisal offered by the company, identified as Company Exhibit No. 3, and containing 219 pages, was prepared in the period from April, 1934, through May 1935, by employees of the company under the direction of Mr. L. B. Moore, assistant to the president and general manager, who is an electrical engineer. He testified that a count of the various units of property was made in the field by him or employees of the company under his direction.

This engineer, who testified that he was in supervisory charge of the appraisal, admitted that he had not had any experience in valuation or appraisal work prior to the time he came with the company, and admitted that this was his first general appraisal. He was assisted in his appraisal work by certain employees of the Florida Power Corporation, an affiliated company, especially by Mr. W. L. Garlington, a substation engineer, on the electric equipment in the plants and substations.

According to Mr. Moore, the values set out in the 1934-1935 appraisal are based on the material costs and labor rates prevailing in the summer of the year 1934 as contrasted with the procedure followed by the Commission's engineer in developing normal prices over a long-range period, excluding the low depression years. The construction shown on the books of the company which was completed after the 1934-1935 inventory was added to the values in the appraisal at cost after

deducting retirements at 1934 appraisal figures so as to arrive at the reproduction cost as shown in the appraisal by the company's engineer as of December 31, 1938.

Mr. Moore testified that unit costs had been developed for certain assembly units for items of property with performance rates of hypothetical construction crews applied to each individual unit to determine the labor cost to be included and to which was added the cost of materials. Although he had never engaged in any major construction work or made an appraisal, the assumed performance of these hypothetical crews were his conclusions and we feel that they are subject to serious criticism.

An illustration of his method of estimating labor costs was given by testimony that Crew Number 6 could haul 36 cross-arm Assembly Units Number 27 per day and that Crew Number 9 (consisting of one foreman, two linemen, two helpers, and one driver) would either assemble 100 units or install 60 units per day. One foreman's entire time would not be required to supervise a crew of only two linemen, two helpers, and one driver. Furthermore, in actual construction it does not seem that a specific crew would perform only one function, such as hauling the crossarm units, but would in reality be hauling all classes and types of materials at the same time. The same reasoning applies to the assembly or installation of units, as a specific hypothetical crew would not confine themselves to one minor performance, but would perform many and varied jobs on the construction of the property in question. While the effect of an erroneous assumption might appear small on one unit, it, in fact, becomes a major item when applied to the multitude of various units involved in the appraisal of this utility.

Under Assembly Number 100, Mr. Moore testified that three crews were necessary. A crew which he designated as Number 2, and entitled Location and Survey Crew, consisted of one engineer, two draftsmen, six rodmen, six transitmen, and twelve axemen. This crew he testified would locate and survey 18 miles per month on 30-foot light clearing. In arriving at the total cost of the necessary survey work he testified that he assumed that it would be necessary to survey each transmission line four separate times over its entire distance. It is obvious that some duplication of survey work would be encountered due to inability to procure rights of way or due to the survey line running into unforeseen obstructions, but with careful and intelligent planning of the routes to be followed, such contingencies could be controlled within a reasonable amount. It is possible that many individual sections of a line might require a second survey due to such contingencies, and occasionally a third route might be necessary in some isolated cases, but it is beyond reason that four separate surveys would be necessary for the entire length of every transmission line of the Georgia Power and Light Company. This is assuming that the most unfavorable conditions are always present. While it is obvious that at times very favorable conditions will be experienced and at many other times something other than the worst can be expected.

The second crew under Assembly

Number 100, which Mr. Moore identified as Acquisition Crew Number 3, consists of one chief right-of-way agent, one assistant right-of-way agent, three rights-of-way agents and two draftsmen would, he testified, acquire 30 miles of right-of-way per month on 30-foot light clearing.

The chief right-of-way agent would not require an assistant right-of-way agent to handle such a small crew. Furthermore, one draftsman should be able to make such drawings as might be necessary and which would nor normally be made by the survey crew. Surveying work normally calls for detailed maps and records and it is hard to conceive that an abundance of map work would be necessary after the survey work was properly completed. The third crew under Assembly Number 100 was designated by Mr. Moore as Clearing Crew Number 4, which consisted of one foreman, one driver, eighteen laborers and one truck which would clear 12 miles per week of 30-foot right of way in his light clearing classification. By calculation this equals 43.6 acres per week and, based on five and one-half working days, is equivalent to 8 acres per day, or a little less than one-half acre per man per day. Considering that this classification is the very lightest grade of clearing which would include removing a light growth of brush and very small trees, it is apparent that this performance rate is entirely too low, and this crew should be able to clear considerably more than 12 miles per week as assumed.

On Mr. Moore's 60-foot light clearing classification he assumes that the Clearing Crew Number 4 could clear 4.8 miles per week. Although the 60-foot width of this right of way is exactly double the 30-foot width discussed above, he figures the same crew will only clear 4.8 miles as compared to 12 miles of the narrower width. Even if his performance rate were correct for the 30-foot clearing it would be possible to clear one-half the quantity in lineal feet of 60-foot width with the same crew, yet Mr. Moore only allows for 40 per cent of the distance in computing 60-foot light clearing. This is equivalent to 6.3 acres per day for the entire crew of twenty men, or about one-third of an acre per laborer per day and this likewise is on the lightest grade of clearing above described. On the 60-foot medium clearing classification it would require six laborers working all day long to clear one acre, based on Mr. Moore's testimony, and on heavy clearing ten laborers would barely clear one acre in a full day's work. In addition to these costs assumed by this witness, he has added overheads in the amount of 21.59 per cent. Considering the descriptions given by him as to the actual density of growth on each of these classifications, the labor costs assigned for clearing right of way is excessive. In this clearing work it is not customary to remove stumps nor are the felled trees hauled from the right of way and therefore the witness has allowed considerably more labor cost than is necessary.

Mr. E. C. Long, engineer for the Satilla Rural Electric Membership Corporation, called on behalf of the Commission, quoted three contracts which had recently been let for clearing rights of way for electric lines built for his coöperative which were constructed in the same general terri-

tory as that served by the Georgia Power and Light Company. These contracts were based on the clearance of 20-foot rights of way, which contract prices were in each instance multiplied by three to arise at an equated cost for a 60-foot right-of-way clearance and resulted in a per mile cost of $126.50 on the first contract, $100 on the second contract and $97.80 on the third contract, which figures cover the average cost per mile for 60-foot right of way for the entire lengths of the lines. These costs average approximately $112 per mile for the entire clearing cost of an equivalent 60-foot right of way for 882 miles of completed lines. Contrasted with that average cost for the entire lengths of those recently constructed lines is Mr. Moore's estimated costs based on his hypothetical crews of approximately $170 per mile for 60-foot right-of-way clearing on 181.9 miles of line. To his average figure of $170 per mile Mr. Moore has added overheads in the amount of 21.59 per cent, which results in a total average cost of approximately $206 per mile. However, illustrative of the ample provision made by the Commission's engineer to cover labor costs in his appraisal is the average figures used by him for cost of clearing 60-foot right of way. His figure for direct cost approximates the figure used by Mr. Moore, substantially the only difference in the final result being in the application of overheads. Mr. Vogel's average figure, including overheads, being $180 per mile of line constructed.

Mr. Long testified that the same class of clearing was involved on his lines as would be experienced on the lines of this company, and that the contract prices included the burning of brush and cutting logs other than saw timber into 4-foot lengths which entailed considerable additional expense.

[3] It was testified by Mr. Moore that he assumed, and included in his cost provision, the location of each boundary of the right of way by the survey crews for the guidance of the clearing crew. This is certainly an unnecessary expense included in his unit costs, for with the center of the right of way located by the survey crew for the location of the line itself, it would be a simple matter for the foreman or the driver or another person who has been included in the clearing crew make-up to measure the required distance from the survey line established to the boundaries of the right of way and properly mark these boundaries by the blazing of trees or by any other convenient method.

The inspection of all the transmission line rights of way by the Commission's engineer developed that many sections of these rights of way required no clearing whatsoever, yet Mr. Moore, in his summary of right-of-way clearing on these lines, shows no part as requiring no clearing. The total of the lengths of the various clearing classifications shown by Mr. Moore for each line equals the exact length of the line, and his unit costs therefore provide for clearing the entire distance on all lines. Even if the Commission's engineer had not testified as to the distances where no clearing was necessary it would be hard to conceive that all the transmission lines of this company running across the different types of land found in south

Georgia would never cross cleared fields where no labor and expense for clearing the land would be involved.

Early in the hearing the statement was made that the Waycross-Florida transmission line right of way was projected through the Okefenokee swamp, but later after objection this statement was withdrawn, however, a considerable portion of the record was devoted to the endeavor to prove that this line crosses swamp land comparable to the Okefenokee swamp, which was an endeavor to sustain the high construction costs estimated by the company's engineer for Waycross-Florida 66-kilovolt transmission line, and at the same time an attempt to discredit the Commission engineer's testimony, in which he stated he encountered no difficulty in traversing the right of way of this line on foot. All this evidence, however, and the many exhibits showing water on the right of way can be dismissed with the evidence in the record of the heavy rainfall in this vicinity for several days immediately prior to the day on which the pictures submitted were taken by witness J. W. Allen, and on answer to questioning, he admitted that Palmettos appeared in various pictures presented, and further admitted that these plants do not grow in places where water continually stands.

[4] In addition to the costs estimated by Mr. Moore for acquisition, surveying and clearing the right of way, he testified that an allowance for cost of easements was included. On cross-examination he converted his cost of easements to an acre basis with the following results: On 30-foot light clearing the cost was $21.70 per acre; on 60-foot light clearing it was $19.25 per acre; on 60-foot medium clearing he used the equivalent of $22 per acre; on 60-foot heavy clearing it figured $27.40 per acre; and on 60-foot extra heavy clearing he testified to the figure $63.30 per acre. On the remaining 66-kilovolt lines Mr. Moore testified that he added the equivalent of $29 per acre to the above figures on all the various classifications with one exception for extra easements. Estimated costs are for easements to cross the land only and do not represent purchase of the land in fee simple. We cannot agree with Mr. Moore that such easements should cost from $19.25 to $63.30 per acre, even though they include timber and crop damage. Such timber as is of value is generally left for the owner of the land so the cost to be allowed may include some damage, but not the outright purchase of land or the timber thereon. Furthermore, the fact that it became necessary for the company to reacquire easements on all the 66-kilovolt lines, except the Florida-Waycross line because the first contracts executed were faulty does not justify the inclusion in a reproduction cost appraisal of an added cost of $29 per acre for extra easements on all classifications as designated. We assume that when easements are acquired the proper papers will be executed with the correct owners and if the management of the company fails through mismanagement to protect the company, the burden should not be placed on the customers of the company. The costs of easements on these lines vary from the equivalent of $48.25 to $92.30 per acre on the various classifications, and such costs on a reproduction cost basis are in the realm of fantasy. Good

land in the south Georgia rural areas can be purchased outright for a great deal less than the figures used by Mr. Moore for each type of land.

In addition to Mr. Moore's right-of-way costs, he has added overheads of 21.59 per cent, a large portion of which is not applicable to right-of-way costs in view of the liberal allowances in the company's appraisal for the costs of easements, acquisition, surveying, and clearing, and because construction overheads have also been included therein.

Included in the company's appraisal is an estimate of $74,429.40 for distribution rights of way, over and above the cost of rights of way on cross-country distribution lines. This estimate of cost of these rights of way includes a cost for clearing and surveying. No evidence was presented by the company establishing any right-of-way acquisition cost which had actually been incurred within towns served by them. Franchises granted by the various municipalities give the company the right to set poles along public streets and alleys in order to render service to the public, and while a court decision was cited by the respondents' counsel where certain payments were required to be made by the company for placing poles along streets, this is certainly the exception rather than the rule. The unit costs estimated by Mr. Moore to cover surveying are problematical. Certainly very good maps can be secured of the larger towns and cities and the distribution system could be laid out from such maps as are available without the necessity of surveying work. This type of general lay-out work is of engineering character and his overhead allowance for this item is more than adequate to cover the costs incurred in laying out a distribution system.

Tree trimming along streets is not a major expense as compared to the clearing of open rights of way and such work is normally done along with and included in the labor for installing conductors. It is evident that the unit costs used by Mr. Moore for installing conductors are ample to include all the expense of tree trimming as would be encountered.

All the estimates of labor costs made by Mr. Moore for his assembly units were similar to those discussed above, and only a few of those used were actually given in complete detail, however, it is apparent from the ones illustrated at the hearing that excessive labor costs have been used which, of course, would be reflected throughout the appraisal. It was brought out in the testimony that the Georgia Power and Light Company had completed the construction of practically all the present system prior to the time that Mr. Moore was employed by the company. It follows that such construction experience as he may have had was confined to minor construction during his employment by the company.

Prorations was the term used to cover estimates made by Mr. Moore for the company in its appraisal of the direct and indirect charges added to the base cost. These prorations make allowance for additional costs under the heading: "Direct Costs" for tools breakage and loss, construction supervision, and field office, and under "Indirect Charges" for engineering, legal expense, taxes, gen-

eral office expense, interest, omissions and contingencies. By the addition of those direct and indirect prorations the base costs in the appraisal by the company's engineer were increased in the following percentages:

Steam Plants	34.77%
Hydro Plants	34.55%
Lands in Fee	17.63%
Buildings	18.95%
Substations	23.93%
Transmission Lines	21.59%
Transmission Rights of Way	21.59%
Distribution Lines	20.46%
Office Equipment	10.39%

[5] A large portion of the costs involved in the construction of a steam plant is invested in the major units such as turbo-generators and boilers which do not require the application of overheads in the same proportion as would be required if many small units were involved. We feel that the application of 34.77 per cent to the base cost of the steam plant units, other than land and buildings, is excessive.

[6] It was developed in the testimony that the "Structures," and "Reservoirs, Dams and Waterways" of the Spring creek hydro plant were appraised by an independent contractor to obtain reproduction cost. Reproduction cost includes all necessary overheads, therefore, the addition of further overheads to the contractor's estimate cannot be justified.

[7] Taking into consideration the amount of supervision and engineering provided for in the base costs of the units in the appraisal by the company's engineer it appears that the 34.55 per cent added for overheads to all items except land and buildings is excessive.

[8] The method used by the company's engineer in obtaining the reproduction cost of the lands owned in fee was to obtain estimates by local realtors as to the current market price. Although it is conceded that an allowance should be made for organization expense and interest during construction, and in certain instances taxes during construction, the other overheads are not applicable. The total of the overheads that should be added generally range between 5 and 10 per cent, depending upon the period of construction, whereas, Mr. Moore has added 17.63 per cent to the direct cost of the land which is likewise excessive.

[9] The amount shown for prorations which was applied to transmission rights of way in the appraisal by the company's engineer is 21.59 per cent. To such items the only overheads applicable are organization and interest during construction. If construction overheads, which do not apply on right-of-way cost, had not been included the total amount added for prorations on transmission rights of way would have been materially less than shown in the appraisal by the company's engineer.

[10] Prorations shown in all of the classifications of the appraisal by the company's engineer appear to be excessive. The application of these overheads produces a weighted average figure of approximately 23 per cent in the company's appraisal as compared to the average overhead used by the Commission's engineer of approximately 16 per cent, and which latter amount we feel is entirely ample. The reproduction cost of the tangible electric property of the company, according to Mr. Moore's appraisal, as of December 31, 1938, after making certain adjustments for

property which was included by error in the sum of $65,766.88, was estimated by the company's engineer in his appraisal to be $3,683,595.23 on reproduction new, or depreciated $3,201,044.25. This is the company's 1934 appraised value plus the net additions as reflected on the books of the company through December 31, 1938.

An inventory of the company's electric property was made by and under the direction of the Commission's valuation engineer, Mr. O. S. Vogel, in the period from February, 1938, through December 1938. The Commission's engineer testified that his inventory was an actual field count of all the units of property of the electric department of the company, except the meter inventory which was taken from the company's records, and except the units as shown by the company's work orders executed after the field inventory was made. The units set out in those work orders were counted and added to the inventory, giving a complete count of all the units as of December 31, 1938. The qualifications and general fitness of the Commission's valuation engineer have been hereinbefore stated, as well as the fact that the inventory made by him was exhaustively compared and unified with the inventory made by the company, with the result that an exact agreement between the two inventories was reached.

Mr. Vogel introduced his inventory and appraisal as Commission's Exhibit No. 1, containing 268 pages, and testified that he developed the basic material costs, prior to the application of overheads, by first determining the average net market price of the various units over a period of years, not including the depression period, to which was added an amount for freight, trucking, and warehousing. Labor rates, prior to the application of overheads, were determined after examining and studying labor wage trends over a period of years to supplement his experienced judgment as to a fair and reasonable labor base rate. The man hours necessary to install the various units were determined from experience and time studies. The overall labor cost was arrived at by multiplying the man hours required per unit times the base labor rate, to which was added the insurance on labor.

The Commission's engineer testified that in arriving at the labor base cost for the different classifications of labor used in utility construction, he examined and studied the various labor trends in this territory over a period of years from 1924 through 1938, eliminating from that period the depression years. After giving full weight to those studies he determined the normal fair labor costs necessary for the reproduction of the various units of the company's electric property. As an illustration he gave an example for transmission and distribution construction. The base cost arrived at was 70 cents per man hour. The time in man hours required to install the various transmission and distribution units was established from time studies and his experience and knowledge of each type of construction work.

In spite of the fact that Mr. J. F. Bailey, president, of the company, gave evidence attempting to discredit this method as well as the base rate,

Mr. Long testified that the contractors constructing lines for his coöperative had experienced no difficulty in securing all necessary labor required during 1937 and 1938 at the rates of 25 cents per hour for common labor, 30 cents per hour for teamsters, 45 cents per hour for subforemen, 50 cents per hour for groundmen, truck drivers, tractor operators, and earth boring machine operators' helpers, 61 cents per hour for second-class linemen, 65 cents per hour for earth boring machine operators, 72 cents per hour for foresters, 83 cents per hour for first-class linemen, and 97 cents per hour for line foremen.

The hypothetical crew to which Mr. Bailey applied the various labor rates in criticism of the method and labor rate employed by the Commission's engineer consisted of one foreman, three first-class linemen, one second-class lineman, one apprentice, and one helper, which is not a typical transmission and distribution crew employed for a major construction, in that an average crew would consist of a greater proportion of unskilled laborers at the lower-wage scale.

It is obvious, therefore, that the rate employed by the Commission's engineer if based on a well-balanced construction crew, such as would be employed in reconstructing the company's property, is amply sufficient to cover all the labor costs. Certainly the company would construct its system at the most economical cost and therefore much of the work would doubtless be let by contract where savings in construction could be effected.

Mr. Vogel determined the costs of the various structures making up the electric plant by first making all the field working drawings deemed necessary to reduce the structures to unit quantities. Unit costs for those quantities were then developed to arrive at the overall costs, prior to the application of overheads.

In developing right-of-way cost the Commission's engineer used the same classifications as outlined by the company with the addition of one classification for "No Clearing." Unit costs for the various classifications were developed by including the amounts required for easements, surveys, clearing, legal, damage, and recording expenses. Lands owned in fee were appraised by local realtors and the base cost of those items is substantially the same in both appraisals, the difference in the final figure is the result of the application of higher overheads by the company.

Quotations were obtained for boiler plant equipment and checked to determine the condition of the market as to such units. Normal delivered prices were determined to the point of installation. To those delivered costs were added sufficient amounts to cover warehousing and trucking, labor of installing, costs of testing, and insurance on labor, before adding overheads. The method used in pricing a switchboard panel complete was to price each item mounted on the panel as a separate unit using delivered net price quotations to which was added warehousing expense, labor of installing, insurance on labor, and the cost of panel pipe frame mounting, before adding overheads, to arrive at the overall cost.

The transmission line poles were first identified by the various types, heights, and classifications, and to the

material price there was added freight to the particular location, warehousing expense, labor for trucking, handling, spotting, digging, and setting; and insurance on labor to get the overall cost in place prior to the application of overheads.

The base price of copper was arrived at by an examination of the copper market prices over the period from 1921 to 1931. Mr. Vogel stated that this period was used because it covered the major period of construction and avoided the distorted price range of the depression period. To the base price of copper was added proper freight charges and quoted "Adders" for drawing to size, etc., to arrive at the cost of the wire delivered. To the delivered price was added an amount for warehousing, trucking, labor of installing, and insurance on labor to arrive at the overall cost prior to the addition of overheads. The base price of copper used in the appraisal by the Commission's engineer was considerably higher than the average 1938 market price, and much higher than the 1934 average price.

The Commission's engineer testified that he analyzed the insulator market over a period of years to arrive at a normal and fair material base price to which was added freight, warehousing expense, labor of installing, insurance on labor, and trucking expense to arrive at the overall cost before the addition of overheads. The insulator prices so used were considerably higher than the average 1938 market price.

The base costs set out by the Commission's engineer in his appraisal according to his testimony, included all of the direct material and labor costs necessary to completely install the units. Indirect construction overheads applicable to the different classifications of the electric plant were added to the base cost. The following indirect overheads were added: Contingencies, Organization Expense, Engineering and Superintendence, Injuries and Damages, Insurance and Taxes during Construction, and Interest during Construction. Those overheads were applied to all plant items except certain general plant items, and Land and Land Rights. The overheads added to Land and Land Rights were Organization Expense and Interest during Construction. No overheads were added to the following accounts under general plant, to wit: Office Furniture and Fixtures, Transportation Equipment, Store Equipment, and Laboratory Equipment. By the addition of the enumerated indirect construction overheads the direct costs were increased in the appraisal by the Commission's engineer in the following percentages:

Steam Plants	21.32%
Hydro Plants	21.32%
Transmission Plant	15.69%
Distribution Plant	16.78%
General Structures	17.94%
Communication Equipment	17.94%
Steam Plant Land	8.65%
Hydro Plant Land	8.65%
Transmission Plant Land and Land Rights	5.56%
Distribution Plant Land and Land Rights	5.54%
General Plant Land and Land Rights	5.56%

Counsel for the company draws attention in his brief to the fact that the Commission's engineer made no allowance in his overheads for taxes on the land items, which items amount to $45,000 and which would have been returned and assessed for taxa-

tion at a much lower figure. This item is, therefore, negligible and is more than offset by the allowance made by Mr. Vogel for taxes on construction items when, as a matter of fact, it is not the practice in this state to assess taxes on property under construction.

After an examination of the inventory and appraisal of the Commission's engineer and full consideration of the testimony given at the hearing, it appears that great care has been exercised in the making of the inventory of the electric property of the company by Mr. Vogel. As above stated, his inventory was unified.

In the opinion of the Commission, ample provision was made by the Commission's engineer to cover all of the direct costs necessary to purchase and completely install the various units of physical property.

Since the inventory was unified and all the direct costs have been properly applied in the appraisal by Mr. Vogel we feel that the overall indirect overheads used by him as above shown are entirely adequate to cover indirect costs.

The reproduction cost of the tangible electric property of the company as of December 31, 1938, after making certain adjustments for omissions in the sum of $14,291, was determined by the Commission's engineer in his appraisal to be $3,280,082 on reproduction new basis, and a present value of $2,776,384.

Comparison of Appraisals

The total reproduction cost found by the company's engineer in his appraisal was $3,683,595.23, or $403,513.23 in excess of the amount determined by the Commission's engineer.

Analyzing this difference under the various classifications set forth in the two appraisals we note that approximately $200,000 of the total difference involved is in land and rights-of-way items. Included in that figure there is approximately $75,000 for distribution rights of way. We have previously pointed out that a charge in this amount for distribution rights of way in connection with distribution system construction cannot be justified. The $125,000 remaining difference of the land item is largely transmission rights of way. The company's engineer estimated that four separate surveys would be needed. However, this is far in excess of actual requirements and the cost, therefore, is excessive. Although it was disclosed by testimony given at the hearing that a considerable portion of the lines would not require clearing, provision was made in the estimates by the company's engineer for clearing over the entire length of the 66-kilovolt lines. The crews set up by the company's engineer provide for an unnecessary number of skilled employees. It was brought out at the hearing that the company's engineer made provision for easements in his cost computations and then made an additional provision for so-called extra easements. We cannot reconcile such a method of computation or the need of an extra cost when the reproduction cost method has been used. The excess cost shown by the company on their right-of-way items arises from the methods employed by the company's engineer

in making estimates and in the application of excessive overheads.

The next main item of difference between the two appraisals is in connection with substations in the amount of approximately $120,000. The company's engineer has allowed a higher per cent of overheads than that allowed by the Commission's engineer upon this item and we think the difference is excessive. Many of the substations have been rebuilt since the 1934 appraisal by the company's engineer, and it would be extremely difficult to accurately account for these changes on the books of the company without reappraising them. Under the method used by the Commission's engineer these substations were appraised as they existed in 1938, and since there is a difference in the substation values between the two appraisals we feel that the appraisal by the Commission's engineer correctly reflects the reproduction cost of this item.

The remaining difference between the two appraisals are approximately, Steam Plants $40,000, Hydro Plants $15,000, Transmission and Distribution Systems other than land $20,000. The differences on these three items as computations will show are fully accounted for by the application of the excessive overheads used by the company. We have pointed out that in every case the overheads used by the company's engineer are greater in per cent than those used by the Commission's engineer.

In the light of the methods employed by the company's engineer and the excessive overheads used we feel that the $403,513.23 is in excess of the true reproduction cost of the physical property of this company.

Going Concern Value

[11–17] No satisfactory "yardstick" has ever been developed for the determination of going value, nor can it be determined by any numerical calculation. The various definitions employed by the courts and textbooks and the one used by the company's witness, Mr. Cheney, all point to its intangible character and make it a question of "award" and not capable of mathematical determination. While the Commission is prepared to and does recognize the element of going value, it cannot accept the formula employed by him in arriving at the value of this element.

In view of the recent decision of the United States Supreme Court in Denver Union Stock Yard Co. v. United States (1938) 304 US 470, 82 L ed 1469, 24 PUR(NS) 155, 58 S Ct 990, the Commission does not feel that it is called upon to accept the formula employed by Mr. Cheney in arriving at going value. Similar evidence as to the component parts of going value were employed by the engineers for the company in the case of Southwestern Bell Teleph. Co. v. Fort Smith (1923) 294 Fed 102, PUR1924E, 662, but in reviewing the decision of the lower court, the method was neither approved nor disapproved, confining its holding to the question that consideration of such a method did not violate the rule against the capitalization of past losses in the Galveston Electric Company Case.

Mr. Cheney testified that a fair allowance for going value for the com-

pany was at least $300,000 which he divided as follows:

Assembling and training personnel, and tuning plant and equipment ...	$30,000
Operating plant at part load during the development period	75,000
Establishing the business	25,000
Establishing records	20,000
Fixed charges on unused plant during the development period	180,000
Total	$330,000

This testimony is entirely opinion evidence by this witness who resides in New York and who admitted that he had spent but a few days in Georgia to become familiar with the property, personnel and records of this company. No evidence was introduced by the company to show that it had actually incurred any expense in the past for the items listed by Mr. Cheney, or even to verify the approximate total cost which he estimated.

Furthermore, Mr. Vogel showed in rebuttal testimony that substantial savings would result in maintenance expenditures during the first years of operation of an electric property if constructed new according to the reproduction cost theory. It is a well-known fact that maintenance expenditures on any class of depreciable property will be larger as its age increases up to a certain point, and that maintenance cost will be quite small when it is reasonably new. There will, of course, always be some cost of this nature, due to accidents or to the acts of God. This evidence of saving was offered to show that there are definite offsets to such costs as set up by Mr. Cheney rather than as a factor for the determination of going value.

The Commission recognizes that some cost would be incident to the training of personnel necessary to manage and conduct the business of a reproduced company such as this one, but it is inconceivable that it would be equal to two full months of the present total payroll of its entire seasoned and experienced force. Certainly the company would be able to employ experienced and trained personnel and this witness was unable in his testimony to show any further need for special training of the employees than would be required to acquaint them with the property.

As to the conjectural item of operating plant at part load during the development period which Mr. Cheney placed at one-half of the "annual rigid expenses" of $150,000, or $75,000, no effort was made to define such rigid expenses nor was there any showing that the company would incur any additional expense to cover such items.

The Commission is not prepared to accept his theory of the gradual utilization of the facilities by the would be customers of this reproduced property. In this age of increasing use of electric energy on the part of those who are now provided with electric service and the increasing demands from those not now served with electric energy, as illustrated by the projection into this field of many electric coöperative organizations financed by the Rural Electrification Administration, is substantial proof of the fact that a very much higher percentage than one-half of the connected customers would be obtained upon the inauguration of the service. We, therefore, feel that Mr. Cheney's estimate of $25,000 is exceedingly problematical.

The item of $20,000 for establishing records is purely opinion evidence without any detail or explanation as to

how the figure was determined. It should be borne in mind that many years of painstaking study and investigation of utility accounting has resulted in the standardization of accounting methods which greatly simplifies the installation or setting up of such records.

It is conceivable that there would be some unused portions of the plant which would result in a lesser revenue during the development period, but certainly the lower maintenance expense incident to an entirely new plant would largely offset Mr. Cheney's estimate. We are not prepared to accept his rate of return of 7½ per cent on the unused property, nor his assumption that the entire property would be in place.

It hardly seems proper to set down what it would cost under average conditions to organize the force of the company, to attach its present customers, to provide so-called rigid expenses, establish records, and to pay interest and other fixed charges on idle plant without at the same time considering whether or not an actual value equal to such cost is apparent and inherent in the property of the company.

The superficial treatment of this element of value by Mr. Cheney goes beyond the inclusive definition of going value as used in court decisions and undertakes to apply fixed formulæ to an aggregation of units of property.

This Commission in past years has accepted the application of a percentage of cost for the determination of this element but we do not feel that going value bears any more relation to the cost of a property than plant value would to its earnings. We feel that the method employed by the Commission's engineer of giving full consideration to this element in his study and calculation of present value is a sounder method of determining and allowing for going value.

This can best be illustrated by reference to the depreciated figure of the Waycross steam plant. This plant, it was shown, is used as a "standby plant" having been operated only a few days during the entire year 1938, and under any treatment could not be admitted in the rate base at a depreciated value greater than 50 per cent of reproduction cost new, but as a matter of fact was set up at 72 per cent condition by the Commission's engineer leaving in the total depreciated value some $80,000 in excess of the figure which would have resulted if a method of determining going value as a separate item had been used.

We recognize the various intangible items which should be considered but we adopt as the sounder method the inclusion of such items in the calculation of the present fair value of the various classifications of physical property as determined by Mr. Vogel, and find that a sufficient sum has been included by him for the item of going concern value.

Organization

Mr. Cheney testified that an allowance of from 3 per cent to 5 per cent of invested capital should be allowed as organization expense and set up $100,000 as the minimum amount, in his opinion, for this cost. This conjectural estimate was intended to cover the assumed "Promotional Work" prior even to the financing or commencement of construction of the company. We note that this 3 per cent is in addi-

tion to the excessive overheads already claimed by the company.

The appraisal made by the Commission's engineer includes an allowance for organization expense in addition to the other overheads enumerated therein as one of the items applied to the direct physical cost, the total amount so included to cover organization being $40,360, and we feel that this is a fair and sufficient allowance for inclusion in the rate base.

Working Capital and Materials and Supplies

[18] We recognize the necessity of an allowance for "Working Capital" for the reason that certain expenses would be incurred by the company in advance of the collection of revenue, and ordinarily the amount claimed of one-eighth of the annual operating expenses less taxes and depreciation would be proper. In this case, however, a major operating expense is the purchase cost of power which, during 1938, amounted to $269,576.52, payment for which is not made in advance but is due and payable ten days after the meter reading made at the end of each month, which is forty days from the beginning of the billing period. Computation, therefore, discloses that the company is required to finance this power bill for a period of approximately five days.

In addition to the above allowance of $75,000 for cash working capital, Mr. Cheney sets up $70,000 as the proper allowance for materials and supplies, and $25,000 for necessary cash on hand, which produced a total of $170,000 as necessary working capital which he rounds off to the sum of $150,000.

The Commission's chief engineer, Mr. N. Knowles Davis, testified that the operating expenses for the company in 1938 were the highest in the history of the company, being, less taxes and depreciation, $598,000, of which $270,000 represented cost of purchased power, and $28,000 management fees paid. He deducted from the $600,000 operating expense (using round figures) the amount paid for purchase of power and management fees, which left a balance of $302,000. The average cost of purchased power was $22,500 per month and the amount necessary for a 5-day period would be one-sixth of that sum, or $3,750. One-eighth of the remaining annual operating expenses for a 45-day period would be $37,500, and added to the allowance for power purchased equals $41,250. No allowance is necessary in working capital for the management fees since these are usually paid after a 45-day period. Mr. Davis testified further that an additional allowance of $5,000 might properly be included in order to be sure that sufficient cash is allowed and it was brought out on cross-examination of this witness that this further allowance could be considered as ample for all petty cash requirements.

In determining the amount allowed for material and supplies, Mr. Davis showed first of all that the amount expended in the year 1938 for maintenance and gross additions less a deduction of $19,681 for materials used in the general rehabilitation of the Spring creek hydro plant amounted to $261,904. In order to determine whether or not this figure was representative the average for a 5-year period ending December 31, 1938, and

the average for a 3-year period ending December 31, 1938, was determined and amounted to $200,057 and $256,668 respectively. Having determined the amount incurred in 1938 as the fair average figure he gave it as his opinion that less than one-half of this total expenditure would be represented by materials and supplies, the remainder being in labor, and other costs. One-sixth (or two months' supply of materials) of this $131,000 would therefore amount to $21,840. However, he expressed as his further opinion that it would be impossible for any utility to store the exact materials required and doubled this amount which gave $43,680. This he considered an ample allowance for materials and supplies.

His conclusion was that the round figure of $90,000 was ample to cover all necessary materials and supplies and cash working capital, and while we are constrained to accept this figure based upon factual evidence and actual experience of the company rather than the arbitrary assumptions of Mr. Cheney, in abundant fairness, we have concluded to increase the $3,750 allowance to $13,750 to take care of laggings or delinquencies. Therefore, the sum of $100,000 will be allowed to cover all requirements for working capital.

Cost of Financing

[19] The company offered considerable testimony through its witness, Mr. W. M. Hickey, in support of its claim that the cost of financing should either be added in the rate base or that the fair rate of return should be increased ¼ of 1 per cent.

This witness offered several exhibits showing the market price and approximate yields of bonds, preferred stock, and common stock of various utilities and industrial companies in support of his testimony as to the return necessary to attract investment in each class of these securities. He suggested that a sound financing of this company would be represented by 50 per cent of its fair value in bonds, 20 per cent in preferred stock, and 30 per cent in common, and according to his testimony these securities would require a yield of 4½ per cent, 7½ per cent, and 12 per cent on the bonds, preferred stock and common stock, respectively, yielding an average return of 7.35 per cent, from which he based his claim that a fair rate of return should be not less than 7¼ per cent for this company.

We learn from the brief of counsel for the company that the amount evidently intended to be included by Mr. Hickey in his testimony to cover the cost of financing was $150,000, but he failed to put this figure into the record or to give the Commission an outline of the basis on which he made his estimate.

The extensive evidence on this subject was offered because of the company's reliance on the two United States Supreme Court Cases cited in counsel's brief where this cost was disallowed on account of the absence of evidence of such cost having actually been incurred as an expense. Dayton Power & Light Co. v. Ohio Pub. Utilities Commission (1934) 292 US 290, 78 L ed 1267, 3 PUR(NS) 279, 54 S Ct 647; Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 83 L ed 1134, 28 PUR(NS) 65, 59 S Ct 715. However, we do not agree that the evidence establishes such cost as hav-

ing been incurred. We also draw attention to the fact that this question was fully considered and reviewed by the United States circuit court of appeals (Minneapolis v. Rand [1923] 285 Fed 818, 829) where the court said in part:

"The cost of financing is assumed upon the theory that a company, desirous of establishing such a plant, should not be possessed of sufficient capital to pay for the plant, and should be compelled to borrow money by floating securities through brokers and should be exposed to large discounts, if compelled to obtain money in this way. The fair value of the plant should not be estimated upon such a basis of impecuniosity and exactions, but upon the theory, if used, of reconstruction, by those financially able to build the plant, paying reasonable prices therefor."

The same rule was laid down with even more clarity and definiteness in the Reno Water Case (1921) 300 Fed 645; and in the report of special master in the Denver Tramway Case, which finding was excepted to by the company, but its exception was overruled by the presiding judge ([1924] 3 F (2d) 285, PUR1925B, 156).

It should be borne in mind that Mr. Hickey's hypothetical set-up for proposed financing of 50 per cent; 20 per cent and 30 per cent by classes of securities was not intended to set forth the present capital structure of this company, nor did he or any other witness offer any evidence that would assist the Commission in segregating or properly allocating the present securities of the company so as to give consideration to such securities as an element of value. While this proposed capital structure is highly desirable from a yield standpoint, in our experience is more desirable than necessary to attract capital on the present money market.

Mortgage bonds are adjudged by the investing public to some extent on the actual value of the properties on which the mortgage is placed but to a larger extent, as admitted by Mr. Hickey on the "times interest earned" factor. Certainly first mortgage public utility bonds issued on no more than 50 per cent of the true value of a company's property with a "times interest earned" factor of 3.26 could be sold at a lesser yield than 4½ per cent per annum at the present time. Mr. Hickey's comparative illustrations, given in an effort to establish a practice of financing, were made in every instance on the basis of capitalization and not fair value of the property.

There is no basis in this hypothetical evidence for the inclusion of any added sum to the rate base, however, such consideration as the rate of return may require will be given full effect in the fixing of rates.

Conclusion

The Commission has earnestly sought to carefully balance all the testimony offered relating to the question under consideration and to contrast and point out conflicts and differences wherever they occurred in an effort to bring together the varying opinions in a harmonious conclusion that would represent the fair value of the company's property as a rate base. In this its initial effort to make a complete inventory and appraisal of a major utility with its own staff, the Commission has proceeded with care and

deliberation. We feel that doubtful issues have been resolved in favor of the company. As stated by Mr. Vogel in the foreword to his appraisal, it was the purpose of the Commission to determine the normal fair value of the company's property rather than the lowest possible value that might be established as of a given date. As above pointed out the prices applied by Mr. Vogel on two principal items in particular, copper wire and insulators, are considerably higher than the average price for 1938. Careful studies were made to determine the average long-range price level for all items, and this "normal" price level was applied throughout his appraisal.

It is worthy of note that the difference in the direct costs of the appraisals by the company and the Commission's engineer before the addition of prorations or overheads is relatively small, and except for the difference in the costs of rights of way would be substantially the same. We have shown that the right-of-way costs are out of line and that the overheads used by the company are excessive and unreasonable, and unquestionably the various overheads allowed by the Commission's engineer are ample to cover indirect costs. While the company's empirical methods of computing the several recognized elements making up going concern value were criticized, consideration has been given to those as well as other factors in reaching a conclusion on this allowance.

The Commission, after a full investigation and after due and careful consideration of all the evidence presented and adduced and all the exhibits and reports, has concluded that the fair value of the electric property of the Georgia Power and Light Company as of December 31, 1938, is not in excess of $2,800,000, including the allowance for going concern value and $2,900,000 with the added allowance of $100,000 for cash working capital and materials and supplies.

Part II—Operating Revenues and Expenses

The Commission issued its rule nisi against the Georgia Power and Light Company on March 31, 1939, returnable on the 24th day of May, 1939, following the making of a complete inventory and appraisal of the company's electric property and a careful study of its operating revenues and expenses.

Reference is made to the opinion and order of the Commission issued on this date in Part I of the hearing, wherein the Commission determined the fair value and rate base of this property to be $2,900,000 as of December 31, 1938, including an allowance for working capital and all intangible values. The history and development of this company is fully discussed in that order, as well as all the testimony on the subject of value.

As indicated above, the hearing on the rule nisi was divided into two parts, viz.: the determination of value, and the analysis of operating revenues and expenses. The evidence offered by the company for the most part was on the question of value, there being little or no direct testimony offered by it on the latter subject.

The present investigation under which this order is issued is a culmination of a prior investigation commenced in 1937, but which was dismissed in order to allow sufficient time

for the Commission to make a thorough study of the company's property and records. At the same time the company agreed to and did file certain revised schedules for domestic and commercial rates effecting small reductions.

Such studies were necessary because of the lack of satisfactory and comprehensive information available to the Commission, both as to value and operations. Following the completion of the inventory, the Commission's staff visited the Florida Power Corporation's office at St. Petersburg, Florida, for the purpose, among other things, of analyzing the 1938 operating revenues and expenses of the company. No effort was made to make an analysis of the operating results of any other years except to segregate the total amount of management fees paid by the Georgia Power and Light Company to various affiliated and so-called service companies for the year 1937. However, the records for each year since the organization of the company as disclosed by the annual reports to this Commission were very carefully analyzed, compared, and discussed at length in the record by the Commission's chief engineer.

As a result of the examination of the books of the company covering the operations of 1938, the Commission's staff reported to the Commission that certain unusual and nonrecurring expenses aggregating some $47,553.51 were not properly assignable to a single year's operation. After conferences with officials of the company it was agreed by them that certain of these expenses were not properly so assignable and Mr. E. W. Neate read into the record the following stipulated adjustments:

"Waycross Steam Plant fuel cost $1,500; Reservoirs, Dams, and Waterways $7,000; Purchased Power $9,500; Sales Promotion $2,000; General Officers Expenses $1,000; Injuries and Damages $7,500; Employees Welfare Expense $641.35; Appraisal Cost Amortized $7,053.03; Administrative and General Expense, Credit $1,965.60; which totaled $34,228.78" and is the amount disallowed.

[20, 21] The study by the Commission's staff developed that "management" and "service charges" had been paid by the Georgia Power and Light Company to eight separate affiliates of the Associated Gas and Electric Company in the total sum of $35,418.81, of which $28,686.09 was charged to the electric department of the company. The company was fully advised of the Commission's position and attitude as to the payment of these excessive sums for so-called services as set forth in its order of January 16, 1936.

Notwithstanding that fact, the company failed to offer any evidence undertaking to support and justify the reasonableness of these payments and, as the record discloses, counsel for the Commission consumed virtually an entire day in a fruitless effort to develop from Mr. Neate, auditor of the company, and from Mr. Bailey, president of the company, information as to the character and need for the services actually rendered and performed for which these charges were made. The only services which Mr. Neate could identify as having been in his opinion of actual value to the Georgia Power and Light Company were those ren-

dered by a Mr. P. H. Wilson in outlining a procedure for estimating original cost, and certain auditing services. But upon cross-examination, it was developed that these services, if charged on a reasonable time basis, could not have been worth the amount paid.

In the opinion of the Commission, the officers of this company were entirely competent and capable of performing the original cost study without the aid of Mr. Wilson's suggestions. We also doubt that the separate audit was essential, or worth the charge.

This investigation has developed that by far the greater portion of these charges have been made for the benefit of the holding company and its affiliated service companies and have been of no value whatsoever to this operating company. Quite evidently this company has been billed on a pro rata basis for the purpose of providing funds for the holding company itself.

The Commission's chief engineer read into the record illustrations of service company charges as made to the three major electric utilities in Georgia. This statement showed that the Georgia Power Company and the Savannah Electric & Power Company paid 0.3785 of 1 per cent and 0.6125 of 1 per cent, respectively, of their gross revenues. Contrasted with those payments was the payment by this company of 3.1363 per cent of its gross revenues, or in other words the per cent of gross revenue paid was five times that of the Savannah Company and almost four times that of the Georgia Power Company. Certainly there would be no justification for basing a service charge on the amount paid for purchased power and especially so in the instant case where the payment is made to another service paying company, therefore, a correct comparative computation would show the service charge payments of the Georgia Power and Light Company to be 4.23 per cent of gross revenue, less power purchased.

The Commission is not here called on to pass upon the reasonableness nor the correctness of the bases of the charges to the first two companies above named and would not do so without specific study, but it is obvious from the comparison made that the sums exacted from the Georgia Power and Light Company are out of all reason. While we doubt the value of any of the services covered by these charges and feel that they should be disallowed in their entirety, the Commission has concluded to allow the sum of $6,850 as an operating expense and remaining sum of $21,836 is hereby expressly disallowed as an operating expense for the Georgia Power and Light Company for the year 1938.

Purchased Power Contract

The company purchased 99½ per cent of its electric energy requirements in 1938 under a contract with an affiliated company, the Flroida Power Corporation. The total quantity purchased being 36,993,040 kilowatt hours while the total net generation by the Waycross steam plant amounted to 10,360 kilowatt hours, and 167,191 kilowatt hours were produced at the Spring creek hydro plant. The net output of the Waycross plant is determined by subtracting from the gross generation the amount of energy used in the plant.

The energy purchased under that

contract is delivered as firm power to the transmission lines of the Georgia Power and Light Company at three points on the Georgia-Florida state line; but metered on the secondary side of the transformers in the 66-kilovolt primary substations located at Waycross, Cogdell, Homerville, Valdosta, Barneyville, Hahira, Quitman, Boston, Cairo, Bainbridge, and Attapulgus. All primary metering equipment on this system is owned by the Georgia Power and Light Company.

This contract provides for an energy rate of 9.5 mills for the first 2,000,000 kilowatt hours per month and 5.0 mills for all additional energy purchased which produced an average rate of 7.9 mills for the 1938 purchases for all departments of the company. The average cost to the electric department was approximately the same, and the charge made for energy delivered to the other departments will be hereinafter discussed.

The Commission's chief engineer placed into the record a photostatic copy of the power contract between the Georgia Power Company and the Florida Power Corporation bearing date of June 16, 1937, and effective on the 25th day of the following September. Delivery under this contract is made at Barneyville, Georgia, employing the facilities of the respondent company from the Florida state line to this delivery point for which it receives from the Florida Power Corporation an annual payment of $4,847.17 to cover the fixed charges of added capacity. The Florida Company agrees thereunder to have available at all times for delivery to the Georgia Power Company 15,000 kilowatts of firm power for which is paid $5 per kilowatt year as a demand charge. In addition thereto a charge is made for all energy delivered computed by adding to the actual generating cost of the Florida Company an amount equal to 10 per cent of that cost plus a proper allowance for losses to the point of delivery. Mr. Davis applied this contract to the requirements of the Georgia Power and Light Company and assumed a total energy charge of 4½ mills per kilowatt hour based on the actual cost of production of 2.8 mills per kilowatt hour as shown in a collateral statement or contract between these contracting companies to which he added 10 per cent as specified in the contract, plus 10 per cent estimated for losses which produced 3.4 mills per kilowatt hour and to which he added in an abundance of fairness 1.1 mills per kilowatt hour. Applying the $5 per kilowatt year demand charge to the established maximum instantaneous demand of the Georgia Power and Light Company's system of 8,500 kilowatts and applying the 4½ mills per kilowatt hour to the 36,993,040 kilowatt hours purchased, amounted to $208,968.68 whereas the respondent company actually paid $292,965.20 for this energy or $83,996.52 more than the same quantity of energy would have cost the Georgia Power Company from the same seller.

Mr. Davis then introduced into the record the existing agreement between all the southeastern operating companies of the Commonwealth and Southern Corporation for specific interchanges of firm power. By applying the rates under that agreement he showed that a charge of $194,486.08 for the actual demand and consumption of the Georgia Power and Light

Company would have resulted, which is $98,479.12 less than actually paid by the respondent company to its Florida affiliate in 1938.

At the request of company representatives, Mr. Davis applied the Wholesale Municipal Rate "C-5" of the Georgia Power Company to the Georgia Power and Light Company's entire consumption. After directing attention to the fact that this municipal schedule was designed for and on the basis of the consumptions of its municipal customers whereunder fixed charges of all transmission and transformation facilities were borne by the seller, whereas under the respondent's intercompany contract these fixed charges are borne by the Georgia Power and Light Company. Nevertheless, the application of that municipal rate would have lessened the cost of purchased power by $4,014.31 for the year 1938.

The Commission, therefore, feels that the amount charged for power purchased by the company as above set forth and for the reasons assigned is excessive and should be reduced.

Power Delivered to Ice and Water Departments

As set forth in the order of Part I in these proceedings, the company operates ice and water plants at various locations on their system and a portion of the purchased energy is delivered by the electric department of the company to these nonregulated properties on the basis of "production expense transferred."

Under the arrangement, all transmission, transformation, and metering up to the point of delivery to each of these plants are performed by and over the facilities of the electric department of this company which requires added installed capacity in the electric system to perform that service. Energy is sold to these plants at its bare cost to the electric department and all fixed charges on the added investment and other expenses are borne by the electric department and reflected in its plant account and operating expenses. It is obvious, therefore, that this energy is delivered to these plants at a loss to the electric department.

The Commission is of the opinion, therefore, that after analyzing the actual demands and consumptions of these plants and giving consideration to the foregonig facts and conditions, this energy should be billed at a rate of not less than 9½ mills per kilowatt hour which would result in an additional credit to the operating expenses of the electric department of $5,160.10 for 1938.

Depreciation Expense

[22–24] At the conclusion of the hearing it was agreed by the officials of the company that a projected earnings statement based on the actual experience up to the end of the hearing and estimated as to the remainder of the year would be prepared and submitted for the year 1939. This estimate was later furnished to the Commission together with a similar projection of the 1940 operations. In both of these statements 18 per cent of electric gross revenue was set up to cover maintenance and depreciation, and was used by the company in 1938. We recognize the necessity of setting aside a sufficient sum annually to cover accruing depreciation not taken care of

through maintenance, and while the company can choose individual methods of computation for any year, the Commission is not prepared to approve the method employed above as an annual charge computation. Annual depreciation expense should properly be determined as a per cent of depreciable property. An examination of the plant accounts and the various types of property, their average life expectancy and in view of the maintenance charges of $64,769.02 included in the operating expenses of the company in 1938, leads the Commission to the conclusion that the amount actually set aside equates to an allowance for annual depreciation of 3½ per cent on the depreciable property and provides approximately 2¼ per cent for maintenance is sufficiently ample to take care of current replacements and annual accrued depreciation.

Conclusion

In calculating the reasonableness of the rates herein prescribed the Commission did not depend upon the latitude provided in the rule laid down in the Smyth v. Ames Case (1898) 169 US 466, 42 L ed 819, 18 S Ct 418, of giving consideration to the *"probable* earnings under the particular rates" prescribed, but has arrived at its conclusions on the basis of the present utilization of the service.

The question of "probable earnings under the particular rates," however, was touched upon in the order in Part I of this proceeding wherein several rate revisions in the rates of this company were reviewed. The Commission's chief engineer presented evidence and various exhibits of a careful study and analysis of the gross revenue trends following the several rate reductions which illustrated the fact that the "probable" effect of a rate reduction would materially increase the utilization of the service and offset to a considerable extent the indicated revenue loss. This is further demonstrated by the increased utilization of electric service under the so-called "Inducement Rate" employed by other companies in the state, whereunder a lower rate is offered on increased consumption under the "Immediate Rate," as well as the experience of the Commission in other rate revisions that the actual revenue loss is always considerably less than the calculated rate reduction would indicate.

The Commission is convinced that the revised schedules of rates will definitely increase consumption, but without making any allowance for this inevitable result the adjustment of the operating expenses of the company in accordance with the Commission's findings herein, based upon the operating revenues and expenses for 1938, will provide sufficient net revenue for a fair rate of return under the rates prescribed on the fair value of the electric property of the company, used and useful, and devoted to public service.

The Commission having given consideration to all of the testimony introduced at the hearing and the various exhibits introduced by the several witnesses and to all the needs and requirements of the company, and after having thoroughly analyzed the effect of the rates herein prescribed by applying them to the customer analyses has concluded that the schedules of domestic and commercial rates herein provided

are fair and reasonable and will yield a fair rate of return over and above necessary operating expenses. Wherefore, it is,

Ordered: That the following schedule of rates shall be the maximum rates to be charged by the Georgia Power and Light Company for residential electric service as now rendered under their present residential schedule:

First	15 kw. hr.	or less per month,	$1.11
Next	60 kw. hr.	per month,	5.00¢ per kw. hr.
Next	125 " "	" "	2.22¢ " " "
Over	200 " "	" "	1.67¢ " " "

Ordered further: That the following schedule of rates shall be the maximum rates to be charged by the Georgia Power and Light Company for commercical lighting and/or retail power service as now rendered under their present schedules, identified as Rate "B-1" and Rate "D-1":

		Per kw. hr.
First	100 kw. hr. per month	7.22¢
Next	200 " " " "	6.11¢
Next	700 " " " "	5.00¢
Next	1,000 " " " "	3.88¢
Over	2,000 " " " "	2.77¢

Minimum monthly charge: $1.11 per meter plus $0.833 per hp. of connected power load.

Ordered further: That the Georgia Power and Light Company allow a 10 per cent prompt payment discount from the above rates for payment of bills within ten days from presentation.

Ordered further: That the schedules herein prescribed shall be made effective on all bills rendered on the classes of service affected on the first meter readings made on and after December 1, 1939.

Ordered further: That the Georgia Power and Light Company shall file rate schedules in conformity with the provisions of this order prior to the effective date of same.

Concurring Opinion of Commissioner Wilhoit

WILHOIT, Commissioner, concurring: While I cannot agree that the parts of the evidence pointed out in the findings of the majority of the Commission are the only reasons for my opinion that the rates for domestic and commercial electric energy served by the Georgia Power & Light Company to its customers are, under present rates, unreasonably high, burdensome to the users and tend to restrict the consumption of energy to the detriment of the company; I do concur in that part of the order of the Commission ordering these rates reduced to the level prescribed in the order.

It is impossible to state in thirty-eight pages the many things that were given weight by five members of this Commission who were giving consideration to the mass of testimony and documentary evidence submitted at the hearing, and I am unwilling to confine myself to the statements made by the majority of the Commission who voted to issue these findings. I excluded no part of the evidence submitted, but gave consideration to all the testimony, both oral and documentary, and I am convinced that the commercial rates could have been reduced even lower than the schedules set out in the order under the evidence produced at the hearings. I am also of the opinion that the reduced rates will be beneficial to the company by increasing the consumption of electricity and, thereby will, within a reasonable time, result in an increase in the gross and net revenue of the company.

Concurring Opinion of Commissioner Jas. A. Perry

PERRY, Commissioner, concurring: I agree in the views expressed in the foregoing concurring opinion, except I do not believe that the commercial rates should be lower than prescribed in the order, at the present time.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Harley D. Carpenter

v.

Pennsylvania Electric Company

[Complaint Docket No. 12557.]

Discrimination, § 96 — Electric rates — Wholesale supply — Differing conditions.

The refusal by an electric company to apply a coöperative association rate to energy sold to an electric customer for resale is not discriminatory when under the coöperative schedule, available only to rural coöperative nonprofit associations taking their entire requirements from the utility, the rate is applied separately to each point of delivery, all association customers are rural customers, and the association must furnish necessary transforming and appurtenant equipment, while delivery to the wholesale customer is at five delivery points, readings are totaled as if energy were delivered at one point, distribution is made to the public through several utilities owned and controlled by the wholesale customer, only part of the customers are rural, service is taken at the utility's line voltage and no transforming and appurtenant equipment is furnished by the customer, and minimum demands and maximum demands at the five points are not coincident.

[September 5, 1939.]

COMPLAINT *by wholesale electric customer against alleged rate discrimination in favor of coöperative association; complaint dismissed. Petition for reconsideration and reargument dismissed October 23, 1939.*

By the COMMISSION: Harley D. Carpenter, complainant, is purchasing his entire electrical requirements from Pennsylvania Electric Company, respondent, under a contract dated November 1, 1928, based upon Rate "I" of respondent's filed Tariff Electric Pa. P.U.C. No. 34. The averments of the complaint are that respondent filed with the Commission Supplement No. 5 to Tariff Electric Pa. P.U.C. No. 36, providing for the sale of electric energy to the Northwestern Rural Electric Coöperative Association of Saegerstown at a lower rate than was charged complainant; that respondent

has refused to apply the rate in Supplement No. 5 to complainant's contract, notwithstanding complainant's use is greater than that of the coöperative; that this refusal is an unreasonable preference and contrary to the provisions of § 304 of the Public Utility Law. Respondent, in answer, states that the rates charged complainant are in conformity with Rate "I" as provided for in the agreement; that its refusal to apply the Supplement No. 5 rate to complainant is due to the difference in service conditions, points of delivery, and apparatus furnished; that no unreasonable preference is granted the coöperative, but the rate difference is based upon difference in service conditions.

Hearings were held and testimony taken: The record shows respondent's filed rate, under which complainant purchases his requirements as contained in the contract of November 1, 1928, for a period of three years and thereafter from year to year, provides as follows:

General Unrestricted Power Service
Rate "I"

Territory:
This rate is available throughout the entire territory of the company.

Availability:
Available for power and incidental lighting for loads of not less than 25 kw. at 2,200 volts or over.

Rate: (Per month)

Demand charge:
First 50 kw. of measured demand @ $2.20 per kw.
All over 50 kw. of measured demand @ $1.50 per kw.

Energy charge:
First 5,000 kw. hr. @ 2.5¢ per kw. hr.
Next 20,000 kw. hr. @ 1.8¢ per kw. hr.
Next 50,000 kw. hr. @ 1.5¢ per kw. hr.
All over 75,000 kw. hr. @ 1.2¢ per kw. hr.

The contract provides for the delivery of power at four locations established at the time the contract was negotiated and for a further division of complainant's territory, making five delivery points as follows:

1. West of Espyville village.
2. Approximately 1½ miles south of Harmonsburg borough.
3. Near the boundary line of West Mead and West Fairfield townships.
4. Sparta township north of Spartansburg borough near Erie county line.
5. Saegerstown borough.

The contract provides that the readings at the several points of delivery shall be totaled, combining the energy in one total amount and the demands into one total demand and the charges computed under the rate as if energy had been delivered at one point.

The energy received at these five points is distributed to the public through ten incorporated electric utilities and one individual company, all owned and controlled by complainant, namely: Harley D. Carpenter, Sparta Township Crawford Public Service Company, Saegerstown Borough Electric Service Company, Cochranton Borough Electric Service Company, Union Township Crawford Public Service Company, Fairfield Township Light and Power Corporation, East Fairfield Township Crawford Public Service Company, Conneaut Lake Borough Electric Service Company, Conneaut Lake Electric Light and Power Company of Sadsbury Township, East Fallowfield Light and Power Company, West Fallowfield Light and Power Company.

Supplement No. 5 to Tariff Electric Pa.P. U. C. No. 36 referred to in the complaint provides for service to cer-

tain coöperatives and we quote, in part, the principal provisions of this supplement:

CONTRACT FILE
Electric Pa. P.U.C. No. 36
Page No. 13 (Supp. 5)

Service to:
The Northwestern Rural Electric Coöperative Association.
The Central Rural Electric Coöperative Association.
Southwest-Central Rural Electric Coöperative Association.

Character of service:
Alternating current, 60-cycle, voltage and phase to be those available on the Company's existing system at the point of connection. The company shall not be required to deliver service at less than 2,300 volts or more than 33,000 volts nominal line voltage.

Rate: (Per month)
$1.25 per kw. of maximum 15-minute integrated demand during the month—plus—
1.0¢ per kw. hr. for the first 50 hours use of the demand during the month
0.8¢ per kw. hr. for all excess kilowatt hours taken during the month.

From this tariff, it appears that service under this rate is available only to the three coöperative associations therein named, such rate being contained in contracts entered into between Pennsylvania Electric Company and the respective coöperative associations.

A copy of the form of contract entered into is contained on pp. Nos. 13A to 13E, inclusive, of the supplement. In Art. II on this contract, the availability clause provides that service under the rates contained in Supplement No. 5 is "Available for service to rural coöperative nonprofit associations, when taking their entire requirements from the company. This service classification shall apply separately to each point of delivery."

From this provision, it further appears that the rates in Supplement No. 5 are available only to ". . . rural coöperative nonprofit associations, when taking their entire requirements from the company."

As set out above, complainant secures energy from respondent at five different points and, through the medium of 11 electric utilities, distributes this energy for resale to the public. In the aggregate, these 11 electric utilities serve 2,604 consumers, of which complainant classifies 819 as residential, 1,550 as rural, 204 as commercial, and 31 as industrial. Complainant states that these consumers are located in boroughs and several townships, and that the 1,550 rural consumers are served from rural line extensions totaling over 300 miles in length and served at 6,900 volts. The record indicates that The Northwestern Rural Electric Coöperative Association presently serves 1,180 customers (all members of the association), and that these are all farmers located in rural areas and that none of them are located in boroughs or communities of any size, nor does the coöperative have any industrial consumers.

It is apparent that the class of consumers served by the 11 distributing companies owned by complainant differs materially from the class of consumers served by the coöperative association. Manifestly, with complainant rendering service to 1,550 rural consumers, it would be possible to segregate these into a number of groups so that service rendered to these groups alone might then conceivably be analogous to the service rendered to the consumers of the coöperative. Since the rural consumers served by the complainant are so widely scat-

tered and presently served by 11 different companies, it would not be possible to segregate them into one group, since the distribution facilities of the 11 utilities are not all interconnected.

The record shows that at the five points of delivery to complainant, service is taken at respondent's line voltage and no transforming or switching facilities other than may be necessary for metering are required. However, in one instance service is rendered to complainant from transforming equipment furnished by respondent for service to another customer. Reference to the contract provided for under Supplement No. 5 shows that, under § (k) *Special Provisions* of Art. II, the coöperative association is required to ". . . install and maintain all fuses, disconnecting switches, oil swtiches, transformers, or other apparatus at the point of connection of the association's lines to those of the company, which may be reasonably necessary to enable association to take and use the electric energy hereunder and to protect the system of company." We see here a basic difference in that under Supplement No. 5 the coöperative association is required to provide any necessary transforming and appurtenant facilities, while under Rate "I" no such requirement is made.

A review of the minimum and maximum demands at the five points of delivery and a comparison of such demands billed complainant with those of the coöperative association during the twelve months ended December 27, 1938, is set forth in the following tabulation:

Location	Kw. Minimum Demand	Month	Kw. Maximum Demand	Month
Espyville	26.4	March	127.2	May
Conneaut Lake	138.0	April	420.0	September
Cochranton	132.0	April	204.0	November
Spartansburg	50.4	May	72.0	April
Saegerstown	116.0	March	156.0	June
Billed Carpenter	568.0	March	800.0	August
Billed Coöperative	192.0	January	348.0	December

From this it appears that the minimum demands as well as the maximum demands at the five points of delivery are not coincident, that they occur in different months, and that the minimum and maximum demands as billed complainant are at variance with the months in which the minimum and maximum occurred in the coöperative association.

From all of the foregoing, it follows that Supplement No. 5 cannot be applied to the service rendered complainant, since it specifically provides that the rates therein are available only to rural coöperative nonprofit associations that take their entire requirements from respondent. Further, the conclusion is inescapable that the character of service rendered the complainant at the five points of delivery and the class of consumers served by him through his wholly owned 11 electric utilities are dissimilar to the character of service and class of consumers of the coöperative association—first, upon the class and type of consumers served; second, with respect to the requirement of the coöperative's providing its own transforming and appurtenant equipment; and third,

with respect to the question of minimum and maximum demand imposed upon respondent's system.

Upon consideration of all the matters involved we are of the opinion and find that respondent's refusal to apply the rate in Supplement No. 5 of Tariff Electric Pa. P.U.C. No. 34 to the energy sold by it to Harley D. Carpenter, complainant, does not constitute an unreasonable preference to the Northwestern Rural Electric Coöperative Association in supplying service to it under Supplement No. 5, and that complainant is not subjected to an unreasonable prejudice and disadvantage; therefore,

Now, to wit, September 5, 1939, it is *ordered:* That the complaint be and is hereby dismissed.

OHIO PUBLIC UTILITIES COMMISSION

Re Fred Braddock et al.

[Nos. 9707–9711.]

Certificates of convenience and necessity, § 140 — Partial transfer.

1. A certificate cannot be transferred in part under the state statute authorizing the transfer of certificates, p. 175.

Certificates of convenience and necessity, § 23 — Power of Commission — Transfer in part.

2. The Commission's authority to authorize the transfer of a certificate or parts thereof is derived from statute, and the statute authorizes the transfer of a certificate and not parts thereof, p. 175.

Certificates of convenience and necessity, § 140 — Partial transfers.

3. The Commission should not permit the transfer of a part of a certificate purely on the theory of substitution and without a showing of convenience and necessity therefor, particularly where the transferor's right resulted solely from the Commission's action in granting him a so-called alternate route, since the rights incident to such alternate route constituted a personal privilege to the transferor, p. 178.

[September 6, 1939.]

APPLICATIONS *for consent to transfer part of certificates of convenience and necessity; denied.*

By the COMMISSION: All of the aforementioned captioned cases were filed on the 9th day of September, 1938, and all heard on the 17th day of October, 1938. Applicants had common counsel.

Cause No. 9707 is a joint application for consent and authority to transfer a part of Certificate No. 1079, now held and owned by one Fred Braddock, to the Reinhardt Transfer Company.

Cause No. 9708 is a joint application for consent and authority of the Cincinnati-Portsmouth Motor Express, Inc., to transfer Certificate No. 801 to Fred Braddock.

Cause No. 9709 is an application to amend Certificate No. 2665 by adding thereto certain rights now held by Fred Braddock.

Cause No. 9710 is an application by Fred Braddock to amend Certificate No. 1079 by adding certain rights now held by the Cincinnati-Portsmouth Motor Express, Inc.

Cause No. 9711 is an application of the Cincinnati-Portsmouth Motor Express, Inc., to amend Certificate No. 801 by transferring a portion thereof to Fred Braddock and by abandoning the remainder.

All aforementioned causes were heard jointly. These respective applications were all protested by the following motor transportation companies—George Killeen & Son; Pennsylvania Truck Lines, Inc.; Germann Brothers; Hillsboro Transportation Company; Trans-Ohio Motor Freight, Inc.; Cleveland, Columbus & Cincinnati Highway, Inc.; Commercial Motor Freight, Inc., and J. W. Harlow.

There are a number of interesting questions to be determined in this litigation. These cases are confusing throughout. This confusion starts with applicants' legal notice, which notice is a jurisdictional prerequisite. As will be noted, there are involved five separate and distinct applications, each given a separate and distinct cause number. For reasons of economy, or otherwise, the respective applicants saw fit to combine the notices incident to, all and singular, such causes in one legal advertisement. Competing transportation companies, as well as the public, are entitled to notice. We believe all protestants made due and timely objection. On careful examination, we are of the opinion that the notice contains all the statutory requirements relative each such causes. The trouble lies in being able to pick out and segregate the allegations required by statute to be alleged and set out in each such case. The legislature never intended that more than one cause of action should be described in any one legal notice. It never was intended that the public be required to exert as much mental energy in reading a legal notice as is required to decipher the notice in the instant case. This is especially true since applicants in certain instances pray for inconsistent relief. If the advertisement relative to five causes of action can be joined in one legal notice, then why not fifty? If five advertisements qualifying litigation in this Commission can be joined, why not join the advertisement relative to one such cause of action with that necessary in securing constructive notice in a divorce action or in an action to foreclose a mortgage, or both? We are not holding this notice to be insufficient or illegal but are however criticizing it.

There are three certificates of necessity and convenience primarily involved in these actions as follows:

Certificate No. 1079 is held by Fred Braddock, the primary or original route thereof extending generally from the city of Columbus, Ohio, in a southwesterly direction via U. S. No. 62 through Washington C. H. to Hillsboro, Ohio; thence via S. R. 73 to Portsmouth, and thence by alternate route via U. S. 23 from Portsmouth

through Chillicothe and Circleville to Columbus, Ohio. This certificate also contains certain other claimed operating rights between Chillicothe and Washington C. H.; between Hillsboro and Locust Grove; between Hillsboro, Greenfield, and Washington C. H., and between Hillsboro, Winchester, and Macon.

Certificate No. 801 is owned by the Cincinnati-Portsmouth Motor Express, Inc., and generally covers the territory immediately west of the city of Portsmouth and immediately east of the city of Cincinnati and covering generally State Routes 74, 125, and U. S. Route 52.

Certificate No. 2665, held by the Reinhardt Transfer Company, generally covers routes and territory paralleling and coincidental with the routes covered by Certificate No. 801 of the Cincinnati-Portsmouth Motor Express, Inc., together with routes running generally from Portsmouth to Dayton, Ohio, over S. R. 73 through Hillsboro to Wilmington, Ohio, and thence via U. S. 68 to Xenia and U. S. 35 to Dayton, and again commencing at Portsmouth, Ohio; thence running north on U. S. Route 23 through Waverly to Chillicothe; thence in a northwesterly direction along U. S. Route 35 through Washington C. H. to Xenia, Ohio. This certificate also contains added rights of some nature between Washington C. H. and Chillicothe, Ohio.

All of the three aforementioned certificates carry important restrictions against the picking up and delivery of freight between certain points along their respective routes.

As hereinabove noted, there are many motor transportation companies protesting the granting of these applications. It is hard for us to conceive how certain of these protestants are or could be interested in or affected by the outcome of this controversy. However, there are so many theories upon which these cases were heard and submitted that it is extremely difficult for us to determine, especially if certain of applicants' theories are adopted in disposing of these cases, just what and whose rights do or might conflict. On no theory would it seem to us that George Killeen & Son, Inc., holders of Certificate No. 699, could be in any manner affected. However, due to the confusion and many uncertainties in and growing out of this controversy, we have decided to permit all protestants to remain as such.

Protestant John Harlow is the holder of Certificate No. 2750 which covers generally U. S. Route 35 running in a northwesterly direction from Chillicothe through Washington C. H. and Xenia to Dayton, Ohio.

Protestant Trans-Ohio Motor Freight, Inc., is the holder of Certificate No. 3089 which generally grants rights from Portsmouth, Ohio, north over U. S. Route 23 to Chillicothe; thence in a westerly direction over U. S. Route 50 as far as Hillsboro, Ohio, and again westerly from Chillicothe, Ohio, over S. R. 28 to Cincinnati, Ohio.

Protestant Pennsylvania Truck Lines, Inc., is the holder of Certificate No. 885 which grants rights (to a large extent interstate only) commencing at Portsmouth; thence north along U. S. Route 23 through Chillicothe and Circleville to Columbus, Ohio; also generally from Circleville along U. S. Route 22 and S. R. 3

through Washington C. H. and Wilmington to Cincinnati, Ohio; also from Chillicothe via U. S. 35 through Washington C. H. and Xenia to Dayton, Ohio; also from Chillicothe over U. S. 50 through Hillsboro to Cincinnati, Ohio. This certificate seems to also carry rights from Cincinnati north along U. S. Route 25 to Dayton, Ohio.

Protestant Germann Brothers, holders of Certificate No. 2273, carries operating rights generally in a southeasterly direction from Cincinnati, Ohio, along U. S. Route 52 through Portsmouth to or near Chesapeake, Ohio. It seems that this certificate also carries other operating rights which are generally southeast of Cincinnati and between Cincinnati and Ripley, Ohio, on and along S. R. 125 and 221, and possibly U. S. Route 68.

Protestant Hillsboro Transportation Company is the holder of Certificate No. 2142 which carries operating rights between Hillsboro and Cincinnati and generally on U. S. Route No. 50.

Protestant Cleveland, Columbus & Cincinnati Highway, Inc., is the holder of Certificate No. 9 which seems to include, among others, operating rights generally between Chillicothe through Washington C. H. to Xenia along U. S. Route 35; from Washington C. H. through Wilmington to Cincinnati, Ohio, along U. S. Route 22 and S. R. 3, and rights from Washington C. H. to Columbus, Ohio, along S. R. 62 and S. R. 3; also rights from Columbus through London, Xenia, and Lebanon to Cincinnati, Ohio, via U. S. Route 40, S. R. 142, and U. S. 42, and again from Columbus through Springfield and Dayton to Cincinnati via U. S. 40, S. R. 4, and U. S. 25, with certain other apparently paralleling and duplicating lines between Cincinnati and Dayton, Ohio, and north of Dayton in the direction of Springfield.

Protestant Commercial Motor Freight, Inc., is the holder of Certificate No. 300 with operating rights commencing at Portsmouth, Ohio; thence north along U. S. 23 by alternate route to Chillicothe; thence by original or primary route through Circleville to Columbus, Ohio; also rights from Circleville along U. S. Route 22 and S. R. 3 through Washington C. H. and Wilmington to Cincinnati, Ohio; rights also from Columbus, Ohio to Washington C. H. over S. R. 62 and 3. Their certificate seems to cover much intervening territory between Chillicothe, Washington C. H., and Columbus, Ohio, over various state and county highways.

Protestant George Killeen & Son, Inc., is the holder of Certificate No. 699 running generally from Columbus to Cincinnati over U. S. Route 40, S. R. 142, and U. S. 42; also from Columbus to Springfield via U. S. 40, S. R. 142, S. R. 56, and U. S. 40; also certain operating rights between Springfield and Cedarville and Springfield and South Charleston.

The certificates granting rights to many, if not all, of the aforementioned protestants contain restrictions, many of which are drastic.

The record clearly shows that one Earl N. Reinhardt is the president of, and in fact controls, the Reinhardt Transfer Company, and the Cincinnati-Portsmouth Motor Express, Inc., is a wholly owned subsidiary of the Reinhardt Transfer Company. So in fact while the Reinhardt interests ap-

pear in the form of corporations, yet the moving factors in all these five applications are Fred Braddock and Earl N. Reinhardt.

The record discloses two undisposed of motions, as follows:

(1) By Mr. Claypool seeking the dismissal of Braddock's application because applicant had not operated over a portion of his certificated route and because any advantage would inure to the sole benefit of applicant.

(2) By Mr. Atwood seeking dismissal of all applications because no convenience and necessity is shown and further because applications are all predicated upon a written contract providing for a splitting of certificates and a transfer of certain parts.

For the purposes of this finding and order we overrule both motions. Exceptions noted.

As hereinbefore stated, the legal advertising was and is confusing, but the confusion is not confined to such advertising. When we read the record in these cases we discover that they were tried and submitted on some five separate and distinct theories, as follows:

(a) The transfer of a part of a certificate under authority of the statute authorizing the transfer of a whole certificate.

(b) The substitution as the owner and holder of a certain certificate or a part thereof of the holder and owner of another certificate or part thereof.

(c) The abandoning of a portion of a given certificate and amending some other certificate by showing convenience and necessity to the end that the latter certificate is extended to cover the route and territory abandoned by the former.

(d) That applicants desire and insist that their respective applications shall all be separately and severally granted before the granting of any portion thereof less than the whole shall become effective.

(e) That while the denial of any of the applications is vigorously protested by applicants, yet the granting of any of the applications will be accepted and the transfers authorized will be made.

[1, 2] As hereinabove stated, Cause No. 9707 is the joint application of Fred Braddock and the Reinhardt Transfer Company for authority to transfer part of Certificate No. 1079. Heretofore, and as early as 1928, this Commission crystallized and has since followed the doctrine that a part only of a certificate cannot be transferred under our statute authorizing the transferring of certificates. (In Re Maag Brothers, April 13, 1928, 1928 Commission Report p. 198). So far as we know, no court of record in this or any other state has passed upon this or any similar question. We find that a few state administrative bodies have passed upon what appears to be either identical or similar situations.

(*Cal.*) A motor carrier possessing certificates of convenience and necessity for operation over two connecting routes, although it might properly consolidate the rights under one certificate, should not be permitted to so consolidate such rights and at the same time sell the right under one of the certificates to another party, and it is immaterial that the transferee proposes to restrict the right after acquiring it. Re Wythe (1937) 22 PUR(NS) 203.

(*Colo.*) The Commission must find that the transfer of a portion of the certificate of convenience and necessity would be in the public interest in order to authorize such a transfer. Re Drumright, Application No. 3872–A, Decision No. 12498, October 22, 1938.

(*Tex. Civ. App.*) A Commission order authorizing the transfer of motor carrier operating rights, in effect canceling the certificate theretofore issued and directing the issuance of a new certificate to the new operator but denying to the new operator the right to serve a point which the former operator was permitted to serve, was held not to have been intended as a limitation upon or denial of any right granted under the original certificate, since the new order was intended merely as the Commission's interpretation of its certificate originally granted, which was found by the court to have been erroneous, notwithstanding the power of the Commission under proper circumstances to limit the operations of the new carrier. Railroad Commission v. Universal Transport & Distributing Co. (1935) 86 SW(2d) 250. Rehearing denied September 25, 1935.

(*Colo.*) Transfer of a part of a permit is forbidden by Rule 7 (b) of the Commission unless the remainder of the permit is voluntarily abandoned. Re Cooper, Application No. 2611–PP–A, Decision No. 9609, March 15, 1937.

(*Ind.*) The Commission refused to allow one corporation owning a certificate which included authority to transport both passengers and property by motor vehicles to sell to another corporation the right to haul freight under the same certificate. Re Indianapolis & S. E. R. Co. (1932) PUR 1933A, 293.

(*N. Y.*) It is contrary to public policy to permit a transfer of part of an operating certificate to one corporation, so that one corporation holds part of it and another corporation holds another part of it. Re Eaton, PUR1933C, 281.

It is quite apparent that whatever authority any state administrative body has to authorize the transfer of certificates of convenience and necessity, or parts thereof, is derived necessarily from statute. We are not advised as to the nature, character, and extent of the statute in any of the states last hereinabove mentioned. Suffice it to say that the statutes of Ohio authorize the transfer of certificates and not parts thereof. We recognize an apparent conflict within the various state administrative bodies. This Commission passed upon the question as early as 1928; we think that decision sound and reaffirm it here. Application No. 9707 will therefore be dismissed.

Cause No. 9708 is the joint application of Cincinnati-Portsmouth Motor Express, Inc., and Fred Braddock for permission to transfer such certificate to Fred Braddock. Again we find ourselves in a confused frame of mind. Application No. 9708 is an application to transfer the whole of Certificate No. 801. Counsel for applicants makes the following statement:

If counsel for the protestant will take the trouble to read the application to abandon, he will note the following language therein, that it desires to abandon Certificate No. 801

and the Reinhardt Transfer Company to substitute for it."

Appearing on the same page of the record is the following colloquy:

Mr. Atwood: In other words, is it true that they only desire to abandon if they are permitted to transfer to Mr. Braddock a portion of their certificate?

Mr. Baker: Transfer all of it.

Mr. Armstrong: I think I was asking a perfectly proper question. I do not care to hear oratory any more than Mr. Baker. His client said he thought he was only going to abandon part of it, and then I read him part of it, and asked him if he was not mistaken.

It is inescapable, after reading the entire record in these cases, that all of these applications grow out of, culminate in, and are an attempt to change operating rights in accordance with the terms and provisions of a certain written agreement heretofore entered into between Fred Braddock and Earl N. Reinhardt. We are not at all certain that this contract is of such a nature as would require the approval of this Commission. Be that as it may, no approval was had. Mr. Braddock was being cross-examined concerning certain provisions of this contract, and on page 53, et seq. of the record, the following questions and answers are found:

Q. Yes, that is right. *A.* I do not know whether I can or not, but I will try. The first party is the Reinhardt Transfer Company, and they are the owners of the subsidiary corporation, the Cincinnati-Portsmouth Motor Express. They agreed to transfer to Fred Braddock, one individual, a section of the route between Cincinnati and Winchester over State Highway 74, and that is to give myself the rights to transport property between points on State Route 74 and points on Certificate 1079.

Q. That paragraph as you consider it, and as you understood it when you signed, was to transfer part of the certificated route, was it? *A.* Yes.

. . . . . .

Q. I say as a consequence of making this contract you filed your application to carry out that paragraph of the contract? *A.* Yes.

Again on page 77 of the Record, Mr. Reinhardt on cross-examination said:

Mr. Armstrong: Will it be conceded that if the Commission should find in favor of you and does not find in favor of Mr. Braddock that the whole thing will go out? *A.* Yes, the contract says so.

Q. In other words, it is your statement here today that if the Commission finds only in favor of part of these applications, then nothing will be carried out? *A.* Absolutely.

It is our opinion, as more fully explained and expressed later herein, that it is the intent of these joint applicants to transfer only a portion of such certificate. So far as the transfer of a certificate is concerned, this Commission has little discretion. The chief question then to be determined is whether or not the proposed transferee is a proper person. In this case such transferee is Fred Braddock. There are few, if any, better operators in the state of Ohio. He is well qualified, physically and financially, to carry on all trucking operations that

would pass with Certificate No. 801. However, we have assumed that it is not the desire or intent of the parties to transfer all of such certificate, but only a part thereof. While, as stated above, this application appears on its face to be one to transfer the whole of this certificate, yet our assumption that it is the intention to transfer but a part of it is strengthened when we look at what applicant is pleased to designate "mileage statement after transfer" which is filed with and made a part of the application to transfer and wherein it appears, by careful analysis and observation, that the mileage after transfer includes only that portion of Certificate No. 801 between Winchester and Cincinnati, Ohio, along S. R. 74. With this approach to the subject, we, for the reasons stated in dismissing application No. 9707, hereby dismiss application No. 9708. We are constrained to suggest at this point, however, that a different holding may be had should it develop that the whole of such certificate is to be transferred, at least our holding might well be different as to that part of such certificate which is not made up of alternate or temporary routes.

Cause No. 9709 is the application of the Reinhardt Transfer Company to amend Certificate No. 2665 by adding thereto certain rights now held by Fred Braddock and contained in Certificate No. 1079. We have already held that a part of a certificate cannot be transferred. We believe such transfer would be not only against public policy, but against the letter and spirit of the statute as well.

[3] When we come to consider Cause No. 9709 we find that we are again confronted with a dual theory of procedure, one theory being that certain operating rights now held by Braddock should be transferred to the Reinhardt Transfer Company solely by way of substitution and without a showing of convenience and necessity therefor; the other theory being that the Reinhardt Transfer Company should be permitted to extend its certificate over and along a portion of the route now held and operated by Braddock by showing convenience and necessity therefor, and Braddock in turn should be permitted to abandon such portion of his route so acquired by Reinhardt as aforesaid.

We shall now dispose of the first of such theories. At the inception of this discussion we were somewhat chagrined to find that the question of alternate and temporary routes plays such an important part in this controversy. It seems that in the past this Commission, motivated perhaps by altruistic reasons not sanctioned by either the legislature or the courts, has granted what are known as alternate routes. The theory justifying such action, if in fact any justification can be had, seems to have been a desire to accommodate some certificate holder to the extent of permitting him to travel the shortest distance between two given points or termini, which termini he then and theretofore had a right to serve, but by a more circuitous route. Such operator was always restricted, however, against the handling of freight at points intermediate to such termini and along such alternate route. It seems that such action on the part of this Commission at best could only be an added personal privilege or adjunct to the rights contained

in the certificate of which such alternate route became a part.

Section 614–92 of the General Code, by implication at least, gives this Commission a right to grant temporary routes, the pertinent part of such section being as follows:

". . . except in case of emergency due to the act of God or unavoidable accident or casualty or the route becoming impassable, or in case it becomes necessary to make temporary detours; . . ."

On reading the record in this case our attention was very forcibly drawn to the fact that whatever rights Mr. Braddock had to transport freight from Columbus to Portsmouth and reverse over U. S. Route 23 resulted solely from an alternate route. Shortly thereafter we discovered that a part. at least, of the rights claimed by Mr. Braddock between Hillsboro and Portsmouth likewise grew out of our action in permitting an alternate route. At this point our interest was aroused to such an extent that we inquired into the rights of the two Reinhardt Companies and we found that much of the routes as defined in the two Reinhardt certificates were made up from alternate routes and temporary routes, the alternate routes having been acquired on the theory that the granting thereof would constitute a personal advantage to the certificate holder and the temporary routes granted upon some such theory as defective roads, defective bridges, floods, and narrow bridges, all of which defects and conditions have, we assume, long since been remedied and removed. A similar situation exists with relation to many of the routes operated by the protestants.

The question then arose, should we permit the transfer of a part of Mr. Braddock's certificate to Mr. Reinhardt purely on the theory of substitution, and especially since Mr. Braddock's rights, if any, from Columbus to Portsmouth and reverse on U. S. Route 23, resulted solely from the action of this Commission in granting him a so-called alternate route? We think the answer is "No," and this is especially true since Mr. Braddock proposes to retain a portion of this Certificate No. 1079, said portion being a part of the original or primary route, for the reason that the rights incident to such alternate route, if in fact any such rights exist, constituted a personal privilege to the holder of the certificate for the primary route. It would cease to be a personal privilege of Mr. Braddock and immediately become a permanent right of Mr. Reinhardt. Mr. Reinhardt has no rights now which would justify him in asking for an alternate route from Portsmouth to Columbus. If Mr. Braddock's certificate was divided up as is contemplated in such written agreement, then he too would be in a position where he would have no need of such alternate route.

We now take up the second proposition, i. e., that each of these applicants be permitted to extend the routes under their respective certificates by showing convenience and necessity therefor and each by a proper showing be permitted to abandon so much of their present operating rights as might be added to the other. In this connection, suffice it to say that no showing of convenience and necessity has been made for the transportation of freight from Columbus to Ports-

mouth or reverse along U. S. Route 23. Protestant Commercial Motor Freight, Inc., has intrastate rights from Columbus to and including Chillicothe. Protestant Trans-Ohio Motor Freight, Inc., has similar rights from Portsmouth to and including Chillicothe, and while Raymond Strawser, holder of Certificate No. 887, was not a protestant in this case, yet our record discloses that he too holds general rights from Columbus to Chillicothe. There is no showing to the effect that present transportation facilities are not adequate and ample.

It is quite true that the record in the instant case shows some evidence of convenience and necessity so far as certain shippers who are situated generally west and northwest of Portsmouth and others situated on Braddock's proposed extension on and along State Route 74 between Winchester and Cincinnati are concerned. As herein repeatedly stated, we are disposing of these matters on the theory that if any part of these applications fail, then all should fail. The examiner who heard these cases originally took the same view and with which we find no fault. We are not disposed to grant Mr. Reinhardt operating rights from Portsmouth to Columbus on either the theory of substitution or the theory of his having shown a convenience and necessity therefor, and by reason whereof Application No. 9709 is denied. Holding the position that if part fail all must fail, we, therefore, deny Applications Nos. 9710 and 9711.

As stated in our disposition of Cause No. 9708, if counsel for applicants upon an application for rehearing cares to suggest to us that our approach to these matters has been and is wrong and that in fact applicants will accept any and all rights to which their respective applications and record might entitle them in conformity with this opinion, then and in that event we will gladly give these matters additional consideration.

It is, therefore,

Ordered, that the said five applications be, and hereby each of them is, denied.

To which order of the Commission denying the said applications, the said applicants each then excepted, here now except and their exceptions here are noted of record.

LOUISIANA PUBLIC SERVICE COMMISSION

Ex parte Texas & Pacific Railway Company

[Order No. 2376; No. 3135.]

Interstate commerce, § 61 — Jurisdiction of state Commission — Railroad station.
The sole question which a state Commission is called upon to decide or which it may lawfully inquire into, upon an application for approval of

plans and specifications for a railroad depot to be substituted for a union station now used, is the adequacy of the station and its accessibility for the purpose which it is intended to serve, if the application is by an interstate railroad which has been authorized by the Interstate Commerce Commission to abandon tracks leading to the present station; and the state Commission cannot afford relief to persons urging that a union station serving all lines entering the city would be advantageous.

[October 17, 1939.]

APPLICATION *by interstate railroad for approval of plans and specifications for new passenger and freight depot; approval granted.*

By the COMMISSION: The Texas and Pacific Railway Company, sometimes hereinafter referred to as applicant, is a common carrier of freight and passengers, by railroad, operating in interstate commerce in the states of Arkansas, Louisiana, and Texas, as well as intrastate commerce in the several states named. The second largest community in Louisiana served by it is Shreveport; and this proceeding is based upon an application filed with this Commission on January 24, 1939, in which it seeks approval of plans and specifications for a new passenger station which it proposes to erect at Shreveport. The proposal also contemplates certain changes in the present freight facilities, but as there is no objection urged to the rearrangement of the freight facilities, and the plans therefor are on their face in the interest of both applicant and the public, that phase of the matter will require no discussion in this opinion and order.

Prior to August 1, 1897, applicant operated its passenger trains in and out of its own station in Shreveport, this station being located at approximately the site on which it proposes to build the structure under consideration here. As of that date it abandoned the use of that site as a passenger terminal, and since then its trains have used the passenger station of the Kansas City Southern Railway, sometimes referred to as a union station. This so-called union station, in addition to serving the owning line Kansas City Southern Railway, is tenanted by the Yazoo and Mississippi Valley Railroad Company and the Texas and New Orleans Railroad Company. The applicant, in reaching this station, utilizes under contract an aggregate of 2.20 miles of main line track of the Texas and New Orleans and the Kansas City Southern Railroads, this segment forming a necessary connection with applicant's main line in reaching the station.

On September 22, 1937, applicant filed with the Interstate Commerce Commission a petition, designated as Finance Docket No. 11790, in which it sought authority to abandon the use of the 2.20 miles of trackage used under contract. The application was filed under paragraphs (18), (19), and (20) of § 1 of the Interstate Commerce Act, as amended. In order to clearly define the jurisdictional question as between this Commission and the Interstate Commerce Com-

mission, which will be hereinafter referred to, we think it well to quote the pertinent parts of the sections of the act mentioned:

"No carrier by railroad subject to this chapter . . . shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment." [Section 1 (18).]

"The Commission shall have power to issue such certificate as prayed for . . . or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate, and proceed with the construction, operation, or *abandonment* covered thereby." [Section 1 (20).] (Italics by the Commission.)

In Colorado v. United States (1926) 271 US 153, 162, 70 L ed 878, 46 S Ct 452, the Supreme Court of the United States held that a carrier subject to the act, having applied to and procured from the Commission a certificate of public convenience and necessity, becomes entitled to act thereunder, any state statute or constitutional provision to the contrary notwithstanding.

In compliance with the law the Interstate Commerce Commission served upon this Commission a copy of the application and a copy of the return to the questionnaire filed by the applicant; and, in behalf of the city of Shreveport and its citizens this Commission requested that formal hearing be held thereon. This hearing was had at Shreveport on January 24, 1938.

As a strict matter of law the only question before the Interstate Commerce Commission in Finance Docket 11790 to be determined was as to whether the present and future public convenience and necessity required the continued operation by applicant over the 2.20 miles of track of other railroads, in the use of the so-called present union station by the Texas and Pacific, the very nature of the proceeding, however, brought into issue the reasonable adequacy of the station proposed to be erected by the applicant and its accessibility to the traveling public. That case was decided by the Interstate Commerce Commission on February 28, 1938, 224 Inters. Com. Rep. 589, 590; and some of its observations in respect of that phase of the subject are of interest. Speaking of the site of the proposed station, the order recites that:

"That site is located on a main line of the applicant, which line directly connects with all of the applicant's main lines in Shreveport. The proposed depot is to be a modern and efficient structure of convenient access, suited to the proper accommodation of the applicant's passengers

traveling to and from Shreveport. The Kansas City Southern station and the one the applicant proposes to construct and use are comparably situated with respect to distance from the principal business district and the leading hotels of Shreveport, the advantage, if any, being with the proposed site, which is somewhat closer to the principal hotels. . . . The applicant operates six trains into and out of Shreveport daily, although none of them originates or terminates there. The use of the proposed depot will eliminate the present hazard of backing trains approximately 1.5 miles down a 1 per cent grade, necessary to enable them to reach the depot now used, and will avoid the several stops required in transferring the trains between differently owned lines, with the result that approximately thirty minutes less time will be required for the operation of each of these trains into and out of Shreveport. . . .

"The question of the construction of a union station at Shreveport has been under consideration at various times for the past fifteen to eighteen years, but apparently at no time could the railroads serving the city reach an agreement. The applicant's proposal to construct its own station has revived the question. The mayor invited the presidents or authorized representatives of all of the carriers serving the city, except, by inadvertence, the St. Louis Southwestern, to meet in his office to discuss the matter. He explained to those representatives the desire of the city of Shreveport for a union station, and that if they found a union station would not be feasible, the city desires two new stations to replace the Kansas City Southern station and the Louisiana & Arkansas Railway station, which is used also by the St. Louis Southwestern Railway. His testimony is that everyone present agreed to coöperate in an effort to select a site for and to construct a union station. He now asks that action on the application herein involved be deferred for a period of 120 days, pending further effort on the part of the six railroads serving the city to agree in the selection of a site and the construction of a union station. If, at the expiration of that period, the city officers are satisfied that such an effort has been made and the carriers cannot come to an agreement, the city will withdraw its objection to the construction of a passenger station by the applicant. The Louisiana Public Service Commission endorsed the mayor's request. . . .

"The record shows that the applicant's proposals will result in operating economies, and in better service than it now affords to the public, and that, under the circumstances, continued joint use by it of the present facilities would impose an unnecessary burden upon it and upon interstate and foreign commerce."

Thereafter, on February 28, 1938, *supra,* the Interstate Commerce Commission issued its formal certificate of public convenience and necessity to the Texas and Pacific Railway Company, granting in all respects the relief prayed for. It did, however, attach to the certificate a condition that the applicant should not commence the construction of its proposed depot in Shreveport prior to

June 1, 1938. The record discloses that in the interim between the effective date of the ICC certificate of convenience and necessity, June 1, 1938, and the date of the filing of the application with this Commission, January 24, 1939, numerous and extended efforts were made by all parties at interest to effect an adjustment of the situation which would meet the needs and requirements of applicant and the other railroads serving Shreveport and at the same time permit of the construction of a central or union station, but these negotiations were without success.

We have hereinabove quoted from the sections of the Interstate Commerce Act, as amended, those parts which relate to the issuance of certificate of convenience and necessity by the Interstate Commerce Commission in circumstances such as are present here. We have also quoted from a decision of the Supreme Court of the United States in which it held that, as to carriers by railroad in interstate commerce, a carrier holding such a certificate may proceed to act thereunder, within its terms and provisions, without regard to any state or other authority. From this it follows that the sole question which we are called upon to decide or which we may lawfully inquire into, is the adequacy of the station which the Texas and Pacific Railway Company proposes to erect at Shreveport and its accessibility for the purpose which it is intended to serve. By this observation it is not intended to imply that there is not a division of sentiment among the citizens of Shreveport pro and con with respect to the desirability of a union station. To the contrary, there is a pronounced division of opinion on that score. The mayor and certain other interests, including one of the Shreveport newspapers and affiliated interests advocate a union station. The chamber of commerce, many of the labor organizations of the city, and other individual citizens, appeared in support of the proposal of the applicant.

The matter came on for final hearing before the Commission at Shreveport on September 26, 1939, before the entire Commission. Mr. J. L. Lancaster, president of the applicant company, was principal witness in its behalf. Mr. Lancaster referred to the operating disabilities encountered in the use of the present union depot, described in some detail the location and physical characteristics of the proposed structure, and briefly referred to the financial savings to be effected through the use of the proposed facility. It is testified that in the year 1938 the applicant paid to the owner of the station presently used by it $49,184, which included approximately $11,000 for trackage rights necessary to reach the station, as heretofore referred to. This witness estimates the annual net savings to the applicant through the use of its own station at $23,384.

The plans of the proposed structure disclose that there is a net floor area of approximately 1,550 square feet in the main waiting room for white passengers as compared with 1,720 square feet at the present union station if it were rearranged as proposed by the owning line during the pendency of the negotiations looking to the continued use of that depot by the applicant, which negotiations failed.

We summarize the testimony of the witness, Somdal, associated with the firm of architects who prepared the plans and specifications for the proposed depot: "The station is to be built on the site of the applicant's presently owned lands on the south side of Market street, one of the major streets of the city, between Caddo and Cypress streets, four blocks from Texas street, the axial street of the main business area. The main building will be set back from the property line of Market street, having a frontage of 76 feet and a depth of 66 feet. It is proposed to move the curb line of the sidewalk along the front of the station back to the property line, thus adding 15 feet to the present width of Market street, increasing this width from 58 to 73 feet, thus avoiding or minimizing any interference with through vehicular street traffic. The design calls for a steel frame main building, of modern and fireproof construction, two stores in height, or 38 feet high above the sidewalk line. The exterior walls are to be of smooth finish limestone with granite base. The main white waiting room, as stated, is to have a total floor area of approximately 1,550 square feet, and the main colored waiting room will have approximately 1,000 square feet of area. Provision is made for the usual accessories of a modern station such as toilet facilities, telegraph, telephone, and news stand installations, etc. Air conditioning is provided for, and suitable parking facilities for taxicabs and private vehicles will be available. Between the waiting rooms and tracks the plans call for a covered concourse 66 x 40 feet, with a covered arcade extension to the Market street curb line. The plans likewise call for a sheltered train platform extending in a southerly direction from the concourse, 16 feet wide and 850 feet long, between the two passenger tracks. A separate one story brick building, suitably located with relation to the main structure, is to be provided for the handling of mail, baggage, and express. The second floor of the main building is to accommodate officials and employees of the applicant. In general, the structure is one of harmonious and pleasing design, and, granted that it is adequate and suitably located, we can conceive of no reason why it should not for the present and for the future, assuming any reasonable and to be hoped for increase in traffic, amply serve the end for which it is designed.

It does not appear that any good purpose will be served by discussing the matter in further detail. The mayor of Shreveport does not attack the proposed structure either from the standpoint of adequacy or suitability of site; but does strongly urge his convictions that a union station, serving all lines entering the city, would be to the advantage of all. For the purposes of this discussion we may concede that, but we are powerless under the circumstances involved in this case to afford the mayor and the interests supporting his position the relief they desire.

In the light of all of the facts and conditions disclosed and within the personal knowledge of the Commission through careful inspection of the physical aspects of the situation, we are of the opinion that the depot as

proposed to be constructed by the applicant is reasonably adequate and sufficient to meet the demands upon it; and that the site on which it is proposed to be built is suitable for the purpose to which it is intended to be put. The operating and financial advantages to accrue to the applicant through the proposed construction, as hereinabove referred to, are self-evident and require no discussion. The premises considered, it is

Ordered, that the general plans and specifications heretofore filed with this Commission by the Texas and Pacific Railway Company for the construction of a passenger depot at Shreveport, La., be, and the same are hereby, approved, subject to such minor changes and modifications as may be required by the architect, contractor, or the said Texas and Pacific Railway Company in the final execution of said plans; and the Texas and Pacific Railway Company is hereby authorized to proceed with the construction of said passenger station at Shreveport, Louisiana.

WASHINGTON SUPREME COURT

Consolidated Freight Lines, Incorporated et al.

v.

Department of Public Service et al.

[No. 27672.]

(— Wash —, 94 P(2d) 484.)

Appeal and review, § 22 — Moot question — Changed conditions.

1. An appeal from an order of the Commission suspending the licenses of trucking companies to operate for failure to deliver freight to a hotel where a strike was in progress, because their drivers had been forbidden by the local manager of the labor union to cross the picket line at the hotel, did not present a moot question by reason of the fact that the managing agent of the union in question permitted the trucks to cross the picket line a few days before the hearing before the Commission, p. 188.

Service, § 143 — Duty to serve — Strikes.

2. The provision in the tariff of trucking companies releasing them from picking up and delivering freight at locations from and to which it is impracticable to operate trucks on account of strikes, did not release such companies from their obligation to deliver freight to a hotel at which a strike was in progress, when at the picket line there was no violence or disturbance of any kind and no one passing through the line was molested in any way; the word "impracticable" as used in such tariff clearly referred to the condition at the picket line, p. 188.

Service, § 143 — Duty to serve — Strikes.

3. A trucking company, being a common carrier, had the duty to send its trucks through a picket line to pick up and deliver freight at a hotel at which a strike was in progress, notwithstanding that the local manager of the labor union had forbidden such company to permit its drivers to go through the picket line, there being no violence or molestation at the line, p. 188.

[October 11, 1939.]

APPEAL *from judgment affirming Commission order suspending carrier's permit but providing such suspension should not become operative if they should furnish service to a certain hotel; affirmed. For decision by Commission, see 27 PUR(NS) 14.*

APPEARANCES: James A. Brown and Lloyd E. Gandy, both of Spokane, for appellants; G. W. Hamilton, Attorney General, and Don Cary Smith and Joseph Starin, both of Olympia, for respondent Department of Public Service; Randall & Danskin, of Spokane, for respondent Davenport Hotel.

MAIN, J.: This is an appeal from a judgment of the superior court affirming an order of the state Department of Public Service.

All of the appellants are now, and at all times in this action mentioned were, common carriers of freight in this state, authorized by the Department of Public Service to haul freight by motor vehicle. The Davenport hotel is the principal hotel in the city of Spokane. In the course of its business, it had a large amount of freight and baggage moving to and from its place of business, both intrastate and interstate. Each of the appellants was serving the hotel in the capacity of picking up freight or baggage at its place of business and delivering it anywhere in this state or in the regular channels of interstate commerce, and each was delivering freight to the hotel which had its origin both in intrastate and interstate commerce.

In August, 1937, a strike of its laundry workers was called at the Davenport hotel, and a picket line was thrown around the hotel. After this was done, the local manager of the Teamsters' Union served notice on each of the appellants, to the effect that they would not be allowed to make deliveries or pickups of freight or baggage at the hotel. All the operators of the appellants' motor trucks were members of the Teamsters' Union. The local manager told the appellants that, if they permitted the trucks to go through the picket line, or discharged any of their employees for refusal to go through, he would call a strike of all of the employees of the appellants who belonged to the Teamsters' Union. After this, the trucks of the appellants did not go through the picket line, though other trucks constantly did. At the picket line, there was no violence or disturbance of any kind, and no one passing through the line was molested in any way. The only reason that the appellants refused to send their trucks through the line was that the local

managing agent of the Teamsters' Union told them that, if they did, he would call a strike of the members of the union.

This condition obtained for some time and until the hotel filed a complaint with the Department on October 15, 1938. On the same day, the Department set the matter for hearing for October 28, 1938. Three or four days prior to the hearing, the local managing agent told the appellants that they could send their trucks through the picket line. Sometime prior to this, the local agent had released the ban so far as interstate commerce was concerned. A hearing was had before the Department, and resulted in an order suspending the permit, under which each one of the appellants operated, for a period of thirty days, but provided that such suspension should not become operative during the continued compliance by the appellants with the provision of the law and of the order. From this order, the appellants took the case to the superior court for review. After a hearing there, the order of the Department was affirmed, and it is from this order that the appeal was prosecuted.

[1] Upon the appeal, two questions are presented: first, whether the action had become moot, and, second, whether the tariff published by the appellants, approved by the department, and in effect during the time the appellants refused to go through the picket line, exempted them from serving the hotel, under the circumstances. If the question has become moot, it is solely by reason of the fact that a few days before the hearing in the Department, the managing agent of the Teamsters' Union permitted the trucks to cross the picket line. This action on the part of the manager of the union fell far short of making the question on the merits moot. Baasch v. Cooks Union, Local No. 33 (1918) 99 Wash 378, 169 Pac 843; Fornili v. Auto Mechanics' Union Local No. 297 (1939) — Wash —, 93 P(2d) 422.

[2] Upon the merits, if the appellants were exempt from crossing the picket line, it is by reason of a provision in the tariff under which they were operating. This provision is as follows: "Impractical Operation: Nothing in this tariff shall be construed as making it binding on carriers to pick up and/or deliver freight at locations from and to which it is impracticable to operate trucks on account of conditions of highways, roads, streets, or alleys, or because of riots or strikes, or when loading or unloading facilities are inadequate."

If the appellants were excused by this provision, they must rely solely upon the contention that, under the statement in the tariff, it was impractical to operate the trucks because of the strike. "Impractical," as used in this tariff, clearly refers to the conditions at the picket line, and, as already pointed out, the conditions there were not such as to make it impractical for the trucks to pass through.

[3] The question then arises whether the appellants were excused by reason of the law. They being common carriers, it was their duty, under the facts and circumstances of this case, to send their trucks through the picket line. 13 C. J. S., Carriers, p. 407, § 202; Moore on Carriers, 2d Ed., Vol. 1, p. 124; Chicago, B. & Q. R. Co.

v. Burlington, C. R. & N. R. Co. (1888) 34 Fed 481; Burgess Bros. Co. v. Stewart (1920) 112 Misc 347, 184 N Y Supp 199.

The judgment will be affirmed.

Blake, C. J., and Millard, Robinson, and Simpson, JJ., concur.

COLORADO SUPREME COURT

L. A. Mayer et al.

v.

Public Utilities Commission et al.

[No. 14590.]

(— Colo —, 94 P(2d) 125.)

Statutes, § 4 — Separable provisions — Validity — Time limitation for review.

1. A provision fixing a period of limitation within which application for review of a Commission order must be interposed, included in a statute containing unconstitutional provisions as to original jurisdiction of a certain court, is severable from, does not depend upon, and is not related to, the provisions concerning jurisdiction, and the portion of the act concerning limitations is not invalid because of such unconstitutionality, p. 190.

Appeal and review, § 79 — Time limitation.

2. The district court properly quashed a writ of certiorari to review a Commission order refusing to authorize the transfer of a certificate, where an application for judicial review was not filed within thirty days after the Commission had denied application for rehearing, p. 190.

[September 11, 1939.]

EN BANC. APPEAL *from judgment quashing writ of certiorari to review Commission order refusing to authorize transfer of certificate; affirmed.*

APPEARANCES: Marion F. Jones and John P. Beck, both of Denver, for plaintiff in error; Byron G. Rogers, Attorney General, James J. Patterson, Assistant Attorney General, for defendant in error Public Utilities Commission; Wilbur F. Denious, Hudson Moore, and Dayton Denious, all of Denver, for defendants in error Colorado Transfer & Warehousemen's Assn. and Weicker Transp. Co.; Robert L. Wood and Lawrence M. Wood, both of Denver, for defendant in error Motor Truck Common Carriers' Assn.

HILLIARD, C. J. A writ of review or certiorari directed by the district court to the Public Utilities Commission on motion was quashed.

Plaintiffs in error Mayer and Swift Moving and Storage Company were the owners of a certificate of convenience and necessity issued by the Public Utilities Commission permitting transportation of commodities for hire over and upon the public highways of the state. This certificate was sold to plaintiff in error Custard Coal and Timber Company. Plaintiffs in error united in an application to the Public Utilities Commission for transfer of the certificate to the Custard Company, which was not granted, and August 18, 1937, their petition for rehearing was denied. Application for writ of review or certiorari in relation to that decision was filed in the Denver district court, September 21, 1937, on which writ issued May 6, 1938. May 13, 1938, defendants in error moved to quash the writ of review on the ground that the petition had not been filed within thirty days after the Commission had denied application for rehearing, required, as said, by § 52, Chap. 137, '35, CSA. That section of the statute provided for court review of the action of the Public Utilities Commission, but application for such review was required to be within thirty days after denial of rehearing by the Commission. The same statute undertook to require all such applications to be made directly to the supreme court, and forbade other courts to act relative thereto. In Clark v. Denver & I. R. Co. (1925) 78 Colo 48, PUR 1926B, 33, 239 Pac 20, we held that in so far as the statute attempted to confer original jurisdiction upon the supreme court, it was unconstitutional; and in Greeley Transp. Co. v. People, 79 Colo 307, PUR 1926D, 433, 245 Pac 720, we decided that the portion of the act which attempts to deprive the district court of jurisdiction in such matters is unconstitutional.

[1, 2] In addition to essaying to confer original jurisdiction upon the supreme court in the matter of review of decisions of the Public Utilities Commission, and to preclude the district court therein—judicially nullified as stated—the general assembly fixed a period of limitation within which application for review must be interposed; namely, thirty days. It is contended by plaintiffs in error that since the provisions of the act relative to court jurisdiction have been declared to be unconstitutional, it follows that the portion of the act concerning limitation likewise is invalid. We are not of that view. Clearly, the general assembly was endeavoring to expedite the procedure contemplated by the entire act, and to that end the limitation relative to judicial review was made a feature of the law. That part of the act which would have conferred original jurisdiction upon the supreme court in the matter of judicial review, while unconstitutional, as we have seen, emphasizes, nevertheless, the purpose of the general assembly to work expedition in the determination of questions arising out of the administration of the act. We think the limitation feature of the statute is severable from, does not depend upon, and is not related to, the provisions concerning the jurisdiction of courts. In Fleming v. McFerson (1933) 94 Colo 1, 28 P(2d) 1013, 1016, the opinion being delivered by Mr. Justice Butler, we said: "In Clark v. Denver & I. R. Co. (1925) 78 Colo 48, PUR1926B, 33, 239 Pac 20, we held that the provision seeking to impose such original

jurisdiction upon this court was unconstitutional and void. And in Greeley Transp. Co. v. People, 79 Colo 307, PUR1926D, 433, 245 Pac 720, we held that the provision attempting to deprive district courts of jurisdiction was unconstitutional and void. That left the act without any provision for a review by a court, but we held that such omission did not render the whole act void, as the district court, under the powers conferred upon it by the Constitution, has jurisdiction to review a decision of the Commission." The foregoing is a fair summary of the doctrine to be deduced from the Clark and Greeley Transportation Company Cases, *supra*. See, also, Public Utilities Commission v. Loveland (1930) 87 Colo 556, PUR 1931A, 212, 289 Pac 1090. It follows —and that was the view of the trial judge—that since the petiton for review was not filed in the district court within thirty days after denial of the application for rehearing by the Public Utilities Commission, judicial review of the latter's acts in this proceeding is barred.

Let the judgment be affirmed.

Bouck, J., not participating.

FLORIDA SUPREME COURT

St. Andrews Bay Transportation Company

v.

Jerry W. Carter et al.

(— Fla — 190 So 788.)

Certificates of convenience and necessity, § 169 — Implied denial of application.

1. The granting of a certificate to one of two applicants constituted in effect a denial of the other application where both applications covered the same or parallel routes, p. 192.

Certificates of convenience and necessity, § 169 — Compliance with Commission order.

2. The Commission acted within its power and authority in concluding that compliance with conditions precedent to the issuance of a certificate on January 4, 1939, was a substantial compliance with its order of December 1, 1938, extending the time for compliance thirty days, p. 192.

[August 1, 1939.]

PETITION *for rehearing of proceeding in which order was entered denying writ of certiorari to the Commission; denied.*

APPEARANCES: John H. Carter and John H. Carter, Jr., both of Marianna, and Keen & Allen and A. Frank O'Kelley, Jr., both of Tallahassee, for

petitioner; Leroy Collins and W. P. Shelley, Jr., both of Tallahassee, for respondents.

PER CURIAM: On June 14, 1939, order was entered denying writ of certiorari to the Railroad Commission in this cause.

Petition for rehearing has been filed suggesting that the court has overlooked and failed to consider certain pertinent facts disclosed by the record.

The court has not overlooked any of the matters referred to.

The record shows that on December 16, 1937, application was pending before the Railroad Commission by Emerson as Receiver of Alabama and Western Florida Railroad Company (later succeeded by John B. Glenn) and another petition by St. Andrews Bay Transportation Company was also pending, the two applications covering the same or parallel routes.

[1, 2] Testimony was taken and certificate of public convenience and necessity was granted the Receiver of Alabama and Western Florida Railroad Company. The granting of this certificate was, in effect, denial of the application of St. Andrews Bay Transportation Company.

The record shows that certificate was granted upon certain conditions named; that the receiver did not comply with the conditions precedent to obtaining his certificate and on July 18, 1938, upon the application of the receiver, the Commission granted him an extension of ninety days. He failed to comply therewith within the 90-day period allowed and on December 1, 1938, the Commission declined to grant the application for additional extension of ninety days but granted the petitioner thirty days which was to expire on December 30, 1938. That he did not comply with the conditions on December 30th, but did comply with all conditions precedent on January 4, 1939, and on that date the Railroad Commission issued the certificate of public convenience and necessity.

There is no contention that the Railroad Commission did not have the power to grant additional time within which the applicant or petitioner could comply with the conditions precedent to the issues of certificate of public convenience and necessity. There is no showing in the record that the St. Andrews Bay Transportation Company renewed its application for certificate at any time after the granting of certificate of public convenience and necessity to receiver of Alabama and Western Florida Railroad Company on December 16, 1937.

Our view is that the Railroad Commission acted within its power and authority in concluding that the compliance with the conditions precedent to the issuance of certificate of public convenience and necessity on January 4, 1939, was a substantial compliance with its previous order extending the time for compliance thirty days.

For the reasons stated, petition for rehearing is denied.

So *ordered*.

Terrell, C. J., and Whitfield, Buford, Chapman, and Thomas, JJ., concur.

Brown, J., not participating as authorized by § 4687, Compiled General Laws of 1927, and Rule 21-A of the rules of this court.

Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on personnel changes, recent and coming events.

Ohio Edison Company to Spend $6,550,000 for Expansion

CONSTRUCTION program of additions and expansion to property this year involving expenditures of approximately $6,550,000 will be the largest program since 1930 and will exceed the 1939 program expenditures by about $3,400,000, according to A. C. Blinn, president, Ohio Edison Company.

Of the total expenditures, about $2,700,000 will be used for enlargement of company's steam generating plant at Toronto, Ohio, on the Ohio river, $2,000,000 in the Akron division, $1,400,000 in the Youngstown division and $450,000 in the Springfield division.

The expenditure at Toronto, the largest of the company's steam generating plants supplying electric power to the Akron and Youngstown areas, includes the installation of a new 35,000 kilowatt steam turbine generator and other equipment.

Approximately $3,500,000 of the $6,550,000 of new capital outlay will be invested in the company's three divisions for such items as transmission lines, distribution lines, substation improvements and installation of meters, transformers, poles, fixtures and services to customers premises.

Electric Heating Catalog Published by Acme

A NEW illustrated 8½ x 11 in. catalog, 64 pages and cover, has been issued by Acme Electric Heating Co., Boston, describing the company's complete line of electric heating appliances, resistance and control equipment for mechanical and domestic uses.

The publication lists the advantages of the Acrom Cast-X electric heating element developed and perfected by Acme engineers. This heating element, it explains, has desirable characteristics for long life, efficient, economical service; hermetically sealed, completely hydroscopic and immune to hotspots and oxidation, acid fumes, liquids, and fire hazard, and unaffected by spillage.

The Acme line includes hotplates, test equipment, ovens, automatic toasters, griddles, broilers, and food service equipment, radiators, recirculating unit heaters, space heaters, immersion heaters, melting pots, electric irons, various types of resistors, rheostats, thermostats and miscellaneous electric heating devices.

Copies of the new Acme catalog No. E-40 may be obtained by writing to Acme Electric Heating Co., 1217 Washington St., Boston.

G-E Reduces Range Prices

SHARP reductions in prices of electric ranges, ranging from $10 to $75, were announced by officials of the General Electric Company at a recent sales meeting for dealers held in Bridgport.

An appliance sales increase of 20 per cent for the coming year was predicted.

R. C. Norberg Elected President Electric Storage Battery Co.

AT a recent meeting of the Board of Directors of The Electric Storage Battery Company, manufacturers of Exide batteries, John R. Williams announced his retirement as president. R. C. Norberg, vice-president and general manager, was elected president and general manager.

NEW SILEX MODEL

THE new Royal Electric Model Silex Glass Coffee Makers have combination high-low elements on all ports, which increase the coffee serving capacity and give greater operating flexibility. They are available in 2, 3, and 4 unit sizes, and are priced from $19.95, complete with glassware (Pyrex brand).

Complete information may be secured from The Silex Co., Hartford.

Mention the FORTNIGHTLY—*It identifies your inquiry*

The company enjoyed nationally a 65 per cent increase in refrigerator volume in 1939 and predictions were made that the current year would witness a further gain.

In addition to cutting range prices, the company announced that it would introduce about the middle of the year a new automatic washing machine, competitive with the Bendix home laundry. The price has not yet been established. An electric dryer was shown at $129.95, less than half the price at which a somewhat similar machine sold a few years ago.

S. G. Eskin New Director of Robertshaw Laboratory

THE Robertshaw Thermostat Company, Youngwood, Pa., recently appointed S. G. Eskin as director of the new Robertshaw Research Laboratory in Pittsburgh.

S. G. ESKIN, *Director*
Robertshaw Research Laboratory

Mr. Eskin was formerly chief engineer of the American Thermometer Company, St. Louis; also former research engineer of the Edison Electric Appliance Company, Chicago, from which position he was appointed director of the Robertshaw Research Laboratory. He holds a Bachelor of Science degree from the Massachusetts Institute of Technology and a Master of Science degree from Northwestern University. He has had wide experience with electrical and gas appliances and their problems of proper temperature control.

Sprague Offers Combination Meter and Regulator

THERE has been a trend during recent years toward the use of high pressure mains and services in both natural and manufactured gas distribution systems. This has been done to reduce the size of mains and the initial lines' investment, especially in the more thinly populated districts and thereby enabling gas distribution companies to serve prospective customers at more reasonable rates.

On high pressure systems in the past, it has been necessary to install a meter and high pressure regulator on each individual service as separate units. A new unit developed by The Sprague Meter Company combines the meter and regulator into a single unit, thus further reducing the initial cost and providing the gas industry with a small, compact, fireproof, and economical combination meter and regulator. This unit also reduces the number of pipe joints at which leaks may occur. The new unit has proved very successful and already has found its place in a fast growing market.

This unit is now available in the No. 1A size, having a capacity of 175 cubic feet per hour at one-half inch drop. It will take care of inlet pressures from one-half to 150 pounds and house-line pressures from two inches to nearly one pound. Manufactured in both the seal and no seal types, the combination unit has the spring adjustment for the outlet pressure the same as a standard regulator. These features make it possible for the combination meter and regulator to be used in any gas distribution system.

A great many units also are being used successfully in the bottled gas field.

$2,809,905 Expenditure Planned by San Diego Gas & Electric

THE San Diego Consolidated Gas & Electric Company will spend $2,809,905 on new construction during 1940, William F. Raber, recently announced.

In need of a source of additional power to accommodate San Diego's increasing population, the company will undertake either of two alternatives. At a cost of approximately $1,200,000, a new powerhouse will be built and a 35,000-kilowatt generator installed, or a 132,000-volt transmission line will be constructed to extend from the facilities of a northern concern to a new substation in Mission Valley.

Electric distribution will be improved at a cost of more than $1,000,000, and $360,000 will be applied on natural gas and steam distribution systems.

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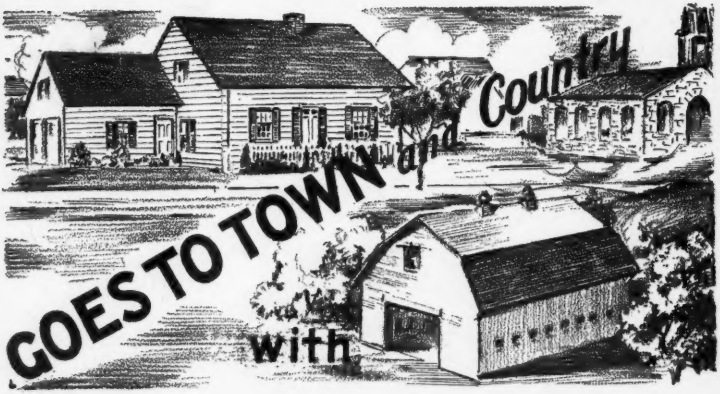

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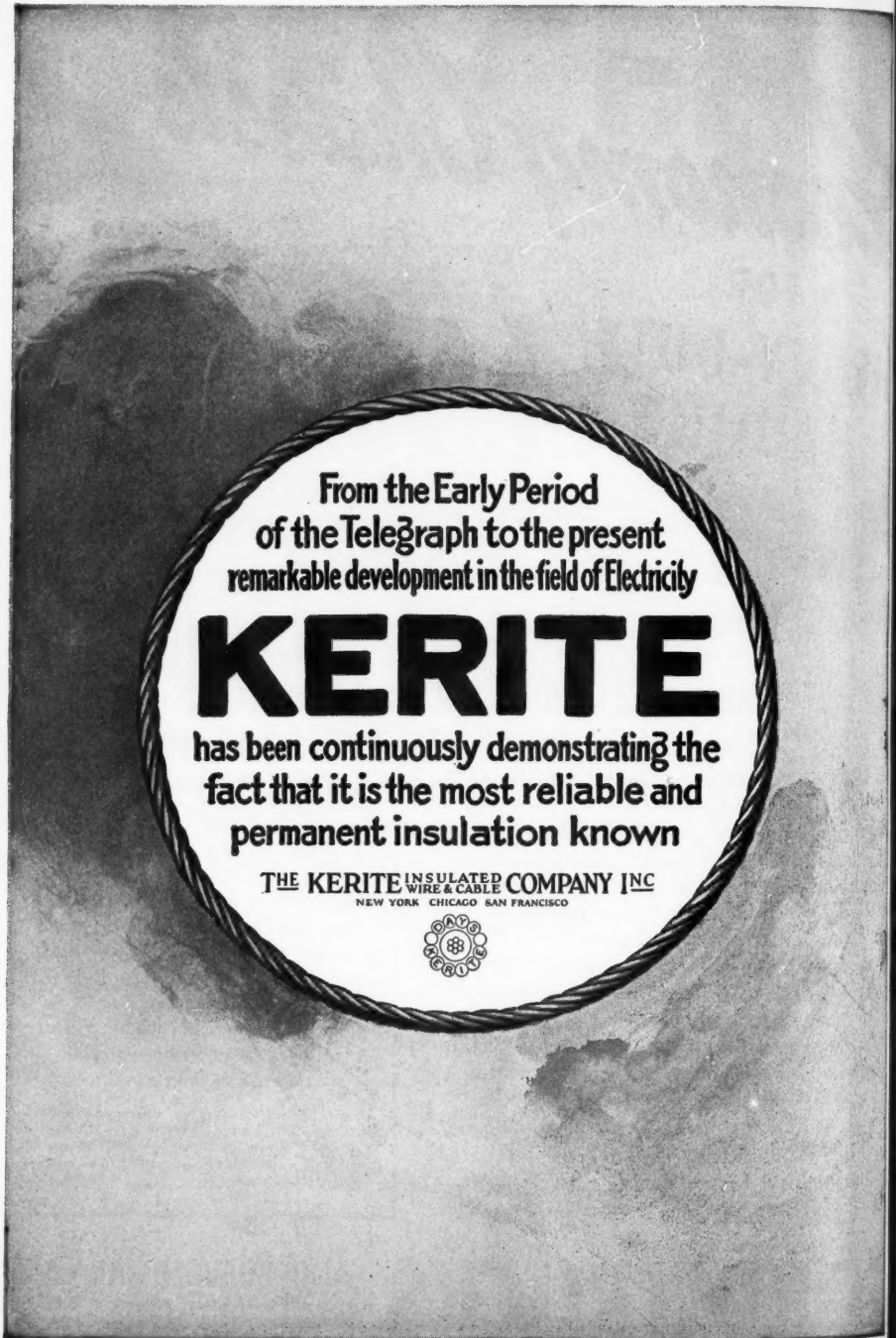

PROFESSIONAL DIRECTORY

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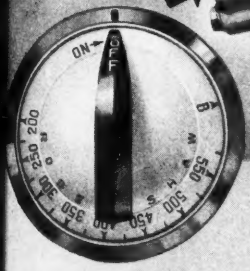

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